

Dylan Reichman – Writing Sample

is illegal under § 201. The *McDonnell* court recognized as much, stating that “if a public official uses his official position to provide advice to another official, knowing or intending that such advice will form the basis for an ‘official act’ by another official, that too can qualify as a decision or action for purposes of § 201(a)(3).” 136 S. Ct. at 2370 (citing *Birdsall*, 233 U.S. at 234). Therefore, the payee public official need not promise to act on a matter within the scope of *their* official functions for the bribe to be criminalized; if they agree to influence a third-party public official whose functions *do* cover that matter, that is enough.

[Section Omitted]

iii. Inducing the Violation of a Lawful or Official Duty

Though most bribery cases are prosecuted under the “official act” theory, *see* § 201(b)(1)(A), there is ample support to prosecute the targets for bribery with the intent to induce the target public official to violate his lawful or official duties under §§ 201(b)(1)(C) & (2)(C).

First, it is worth noting that the subsections use both the phrases “lawful” and “official” duties. Section 201(b)(1)(C) prohibits an outsider from bribing a public official “in violation of the *lawful duty* of such official or person,” (emphasis added), while § 201(b)(2)(C) prohibits a public official from being bribed “to do or omit to do any act in violation of the *official duty* of such official or person.” (Emphasis added.) That dual usage suggests that the duties captured by this species of bribery need not be those solely prescribed by *law*, that is, statutes or regulations.

In addition, while the statute does not define “lawful” or “official” duties, there is good reason to think that, just like with an “official act,” a “lawful” or “official duty” can be defined by reference to custom in addition to duties prescribed by statutes or regulations. *Birdsall* is directly on-point: “In numerous instances, *duties* not completely defined by written rules are clearly established by settled practice, and action taken in the course of their performance must be regarded as within the provisions of the above-mentioned statutes against bribery.” 233 U.S. at 231 (emphasis added).

The proposition that lawful or official duties encompass a wider range of duties than those prescribed by statutes or regulations is reinforced by a canvas of cases prosecuted under the “lawful duty” theory. To begin, the Second Circuit has counseled that §§ 201(b)(1)(C) & (2)(C) apply where the bribe is meant to “induce actions that directly violate a specific duty, such as a prison guard’s duty to prevent the smuggling of contraband,” whereas the “official act” theory is more appropriate in cases “involving the exercise of judgment or discretion.” *United States v. Alfisi*, 308 F.3d 144, 151 n.3 (2d Cir. 2002).

Cases prosecuted under the “lawful duty” theory suggest that the definition of a “lawful” or “official duty” can encompass a wide range of official responsibilities—prescribed by positive law, custom, or otherwise. *See, e.g.*, Indictment, *United States v. Broumand*, No. 20 Cr. 224 (C.D. Cal. Jun. 12, 2020), ECF. No. 26 (charging FBI Special Agent with accepting bribes in exchange for divulging whether individuals were under investigation and running names of individuals through law enforcement databases); *United States v. Cruz*, 946 F.2d 122, 123 (11th Cir. 1991) (affirming conviction of IRS Special Agent tasked with investigating a target who instead met with the target and offered to provide information about the investigation in exchange for bribe); *Gjieli*, 717 F.2d at 975 (affirming convictions for attempted bribe of ATF Agent in exchange for

Dylan Reichman – Writing Sample

assistance with breaking inmate out of prison); *United States v. Lanci*, 669 F.2d 391, 392–93 (6th Cir. 1982) (affirming conviction of FBI clerical employee for divulging confidential information from FBI files in exchange for bribes); *Parks v. United States*, 355 F.2d 167, 168 (5th Cir. 1965) (affirming conviction of Air Force sergeant who accepted bribes in exchange for disclosing names of all new recruits to insurance company, where bribes were “made to ‘induce him to do an act in violation of his lawful duty’ of complying with Air Force Regulations”) (emphasis added); *United States v. Hall*, 245 F.2d 338, 339 (2d Cir. 1957) (affirming conviction of defendant for attempted bribery of INS investigator with the intent to “influence him to neglect his duties” and instead fraudulently admit foreign national to the United States) (emphasis added).

While the case law on this species of bribery is not robust, these cases stand for the proposition that bribing a public official to induce the violation of their official or lawful duties—either as established by statute, regulation, or custom—violates §§ 201(b)(1)(C) & (2)(C). These duties can include, for example, the duties to follow Air Force regulations, *Parks*, 355 F.2d at 168, or the duties to “faithfully investigate potential criminal activity, . . . only use law enforcement databases for legitimate law enforcement activity, and . . . refrain from sharing information from law enforcement databases with others.” *Broumand*, Indictment at 11. Here, there is ample evidence that the target public official was bound by official and lawful duties prescribed by statutes, regulations, executive orders, government policies, and customs. These duties fall comfortably within the “lawful duty” theory of bribery. I recommend prosecuting the targets under this theory.

Applicant Details

First Name **Trevor**
 Middle Initial **J**
 Last Name **Rhodes**
 Citizenship Status **U. S. Citizen**
 Email Address trevorrhodes3@gmail.com

Address

Address
Street 2106 10th St NW
City Washington
State/Territory District of Columbia
Zip 20001
Country United States

Contact Phone Number **6014972779**

Applicant Education

BA/BS From **Mississippi State University**
 Date of BA/BS **December 2018**
 JD/LLB From **Georgetown University Law Center**
https://www.nalplawschools.org/employer_profile?FormID=961
 Date of JD/LLB **May 15, 2022**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **The Georgetown Law Journal**
 Moot Court Experience **No**

Bar Admission

Admission(s) **District of Columbia**

Prior Judicial Experience

Judicial Internships/
Externships **No**
Post-graduate Judicial
Law Clerk **No**

Specialized Work Experience

Recommenders

Siegel, Jennifer
Jennifer.L.Siegel@medstar.net
410-772-6798

Micallef, Joseph
jmicallef@sidley.com
2027368492

Sirota, Rima
rs367@law.georgetown.edu
(202) 353-7531

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Trevor Rhodes
2106 10th St NW Apt 4
Washington, D.C. 20001

April 8, 2023

The Honorable Jamar K. Walker
United States District Court, Eastern District of Virginia
600 Granby St,
Norfolk, VA 23510

Dear Judge Walker:

I am the Health Law Fellow at MedStar Health and alumnus of Georgetown University Law Center and *The Georgetown Law Journal*. I am writing to apply for a 2024-2025 clerkship in your chambers.

I would like to clerk in Norfolk because I want to build my career in the DMV area and because I am interested in patent law. I have enjoyed living in D.C., and I want to work near this area for the long term. I also enjoy studying patent law, and the Eastern District of Virginia provides a terrific opportunity to pursue that interest.

More specifically, I want to clerk for you, Judge Walker, because I want to follow a career path similar to yours. I am eagerly pursuing a career as a federal prosecutor, hoping to focus on healthcare fraud. I believe that our shared interests and career goals would create a fruitful and enjoyable working environment.

Enclosed please find a copy of my resume, my law school transcript, and my writing sample. Letters of recommendation from Professor Rima Sirota (202-662-9841), Professor Joseph Micallef (202-736-8492) and a senior attorney at MedStar Health, Jennifer Siegel (301-351-5912) are attached.

If you have any questions, please feel free to contact me at trevorrhodes3@gmail.com or (601-497-2779). Thank you very much for considering my application.

Respectfully,

Trevor Rhodes

Trevor Rhodes

2106 10th St NW Apt 4 Washington, D.C. 20001 | Trevorrhodes3@gmail.com | (601) 497-2779

EDUCATION

Georgetown University Law Center

Washington, D.C.

Juris Doctor

May 2022

GPA: 3.61

Journal: *The Georgetown Law Journal*, Executive Editor for the *Annual Review of Criminal Procedure*

Activities: Health Law Society, *Treasurer*; World Health Organization Negotiation Simulation;

Student Intellectual Property Law Association; COVID-19 Task Force

Mississippi State University

Starkville, MS

Bachelor of Science in Biomedical Engineering, Minor in Pre-Law

December 2018

Honors: President's Scholar; Dean's Scholar

Senior Project: Designed and constructed titanium screw used in canine neurosurgery

EXPERIENCE

MedStar Health

Columbia, MD

Health Law Fellow, Office of the General Counsel

September 2022-Present

- Supported Telehealth Institute by analyzing and ensuring compliance with state and federal laws and regulations regarding: patient consent for asynchronous services and for remote patient monitoring; scope of medical services that may be delivered via telehealth; and accessibility of telehealth services
- Analyzed medical-service partnership agreements, medical-legal partnerships, and public grant-funded programs for compliance with AKS, Beneficiary Inducement CMP, and Stark law
- Supporting subsidiaries by drafting, revising, and negotiating vendor contracts, master service agreements, stock purchase agreement, and data security exhibits
- Participating and coordinating with outside law firm in response to attorney general investigation: gathered documents; analyzing documents for responsiveness or privilege; participating in internal interviews

Civil Litigation Clinic, Georgetown University Law Center

Washington, D.C.

Student Advocate

Spring 2022

- Represented mother and disabled child before the Department of Education's Office for Civil Rights (OCR)
- Constructed case theory permitting OCR to enforce Section 504 against a private after-school care program
- Drafted complaint, cogently intertwining pertinent law with advantageous facts

U.S. Department of Justice

Washington, D.C.

Legal Intern, Civil Division, Fraud Section

Fall 2021

- Researched novel legal theory interpreting the False Claims Act to establish "preponderance of evidence" standard for violations of criminal fraud law
- Drafted memo analyzing whether a fraudulent inducement claim can be based on fraudulent estimates

U.S. Department of Health and Human Services

Washington, D.C.

Legal Intern, Office of Global Affairs, Trade and Health Office

Summer 2021

- Analyzed World Trade Organization proposals affecting IP of COVID vaccine technology
- Drafted report identifying legal mechanisms countries may adopt to obtain private companies' trade secrets

U.S. Attorney's Office for the District of Columbia

Washington, D.C.

Legal Intern, Violent Crimes and Narcotics Trafficking Section

Spring 2021

- Singlehandedly analyzed fact pattern then drafted motion opposing a defendant's motion to suppress

U.S. Department of Health and Human Services

Washington, D.C.

Legal Intern, Office of the National Coordinator (ONC)

Summer 2020

- Researched and analyzed state legislation and administrative rules affecting "information blocking"

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Trevor James Rhodes
GUID: 824826524

Course Level: Juris Doctor

Degrees Awarded:
Juris Doctor Jun 08, 2022
Georgetown University Law Center
Major: Law

Entering Program:
Georgetown University Law Center
Juris Doctor
Major: Law

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2019							
LAWJ	001	94	Civil Procedure	4.00	B+	13.32	
			Kevin Arlyck				
LAWJ	002	41	Contracts	4.00	B	12.00	
			Gregory Klass				
LAWJ	004	94	Constitutional Law I: The Federal System	3.00	B+	9.99	
			Laura Donohue				
LAWJ	005	42	Legal Practice: Writing and Analysis	2.00	IP	0.00	
			Rima Sirota				
			EHrs QHrs QPts GPA				
Current			11.00 11.00 35.31 3.21				
Cumulative			11.00 11.00 35.31 3.21				
Spring 2020							
LAWJ	003	42	Criminal Justice	4.00	P	0.00	
			Rosa Brooks				
LAWJ	005	42	Legal Practice: Writing and Analysis	4.00	P	0.00	
			Rima Sirota				
LAWJ	007	94	Property	4.00	P	0.00	
			Sheila Foster				
LAWJ	008	94	Torts	4.00	P	0.00	
			Gary Peller				
LAWJ	1603	50	How to Regulate	3.00	P	0.00	
			David Hyman				
LAWJ	611	06	World Health Assembly Simulation: Negotiation Regarding Climate Change Impacts on Health	1.00	P	0.00	
			Vicki Arroyo				
Mandatory P/F for Spring 2020 due to COVID19							
			EHrs QHrs QPts GPA				
Current			20.00 0.00 0.00 0.00				
Annual			31.00 11.00 35.31 3.21				
Cumulative			31.00 11.00 35.31 3.21				
Fall 2020							
LAWJ	1625	05	Technology Policy and Practice	2.00	B+	6.66	
			Hillary Brill				
LAWJ	206	08	Health Law and Policy	4.00	A	16.00	
			Gregg Bloche				
LAWJ	317	08	Negotiations Seminar	3.00	A-	11.01	
			Stephen Altman				
LAWJ	332	07	Patent Law	3.00	A	12.00	
			Joseph Micallef				
			EHrs QHrs QPts GPA				
Current			12.00 12.00 45.67 3.81				
Cumulative			43.00 23.00 80.98 3.52				

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Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2021							
LAWJ	1028	08	Health Care Fraud and Abuse Seminar	2.00	A-	7.34	
			Joshua Levy				
LAWJ	121	09	Corporations	4.00	A	16.00	
			Urska Velikonja				
LAWJ	1491	05	Externship I Seminar (J.D. Externship Program)		NG		
			John Thorlin				
LAWJ	1491	80	~Seminar	1.00	P	0.00	
			John Thorlin				
LAWJ	1491	82	~Fieldwork 3cr	3.00	P	0.00	
			John Thorlin				
LAWJ	215	09	Constitutional Law II: Individual Rights and Liberties	4.00	A-	14.68	
			Robin Lenhardt				
			EHrs QHrs QPts GPA				
Current			14.00 10.00 38.02 3.80				
Annual			26.00 22.00 83.69 3.80				
Cumulative			57.00 33.00 119.00 3.61				
Fall 2021							
LAWJ	1492	07	Externship II Seminar (J.D. Externship Program)		NG		
			Rachit Choksi				
LAWJ	1492	122	~Seminar	1.00	B+	3.33	
			Rachit Choksi				
LAWJ	1492	124	~Fieldwork 3cr	3.00	P	0.00	
			Rachit Choksi				
LAWJ	165	05	Evidence	4.00	A	16.00	
			Michael Gottesman				
LAWJ	178	07	Federal Courts and the Federal System	3.00	P	0.00	
			Michael Raab				
LAWJ	2037	12	Health Information Technology and the Law	2.00	A-	7.34	
			Jennifer Geetter				
LAWJ	3038	08	Biosecurity and the Law	2.00	B+	6.66	
			Jared Silberman				
			EHrs QHrs QPts GPA				
Current			15.00 9.00 33.33 3.70				
Cumulative			72.00 42.00 152.33 3.63				
Spring 2022							
LAWJ	025	05	Administrative Law	3.00	A-	11.01	
			Anita Krishnakumar				
LAWJ	044	05	Appellate Practice Seminar	3.00	B+	9.99	
			Erin Murphy				
LAWJ	1494	05	Civil Litigation Clinic	6.00	A-	22.02	
			Stephanie Glaberson				
LAWJ	361	03	Professional Responsibility	2.00	B+	6.66	
			Michael Rosenthal				

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This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Trevor James Rhodes
GUID: 824826524

----- Transcript Totals -----				
	EHrs	QHrs	QPts	GPA
Current	14.00	14.00	49.68	3.55
Annual	29.00	23.00	83.01	3.61
Cumulative	86.00	56.00	202.01	3.61
----- End of Juris Doctor Record -----				

Unofficial

April 9, 2023

The Honorable Jamar Walker
U.S. District Court for the Eastern District of Virginia
600 Granby St Ste 193A, Norfolk, VA 23510

Dear Judge Walker:

I am writing to highly recommend Trevor for this clerkship. Trevor worked with me in a legal capacity during the last year at Medstar Health, and during that time, he demonstrated exceptional skills and qualities that make him an excellent candidate for this position.

Trevor's legal research and writing skills are truly outstanding. In every project he undertakes, he takes the time to fully understand the complex issues at hand, and he conducts very thorough research. His legal writing is clear, concise, and well-organized, and he always presents his arguments in a logical and compelling manner. Trevor's research and writing skills enabled us to better assist our clients with the ever-changing regulatory landscape during the public health emergency. When working on contractual agreements, he asked thoughtful questions of our clients and drafted provisions to further their goals. He is a quick study and provided helpful research memorandums on a myriad of legal topics. I have no doubt that his skillset will be valuable to any employer lucky enough to have him on board.

What sets Trevor apart, however, is not just his technical legal skills, but also his exceptional personal qualities. Trevor is a pleasure to work with, and his easygoing and personable nature made him an integral part of our team. He is a great listener and a thoughtful collaborator, always willing to consider other viewpoints and work collaboratively with his colleagues. His positive attitude and sense of humor helped to lighten the mood during stressful times, and his dedication to his work was always evident.

Trevor's exemplary work has been invaluable to supporting MedStar's telehealth efforts. Telehealth services expanded during the public health emergency and will continue to be an important modality for rendering care after the public health emergency ends. Trevor spent countless hours researching relevant regulations, statutes, and state guidance documents to provide us with detailed memos that have shaped MedStar's strategy. He was able to explain complex legal concepts in a clear and concise manner to our clients.

In addition to his legal work, Trevor also made significant contributions to our team in other ways. He was always willing to take on additional responsibilities, and he often volunteered to help our colleagues with their assignments. He was also an active participant in team meetings and discussions, and he was always willing to share his insights and ideas. His positive attitude and enthusiasm were contagious, and they helped to create a positive and productive work environment.

In conclusion, I cannot recommend Trevor highly enough for this position. His legal research and writing skills are truly exceptional, and his personal qualities make him a pleasure to work with. He is a dedicated and hard-working individual who is committed to achieving the best possible outcomes for his clients. I have no doubt that he will be an asset to any employer that has the good fortune to work with him.

Please do not hesitate to contact me if you require any further information or if you have any questions about Trevor's work with our team at Medstar Health.

With Kind Regards,

Jennifer Siegel
Hospital Counsel

MedStar Health, Inc.
MedStar Good Samaritan Hospital
MedStar Union Memorial Hospital

Jennifer Siegel - Jennifer.L.Siegel@medstar.net - 410-772-6798

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May 19, 2021

Re: Clerkship Recommendation for Trevor Rhodes

To Whom it May Concern:

I write to support Trevor Rhodes's application to serve as a law clerk.

Trevor was a student in my patent law class at Georgetown Law Center in the fall of 2020. That was, of course, in the midst of the pandemic, so classes were held only remotely. Yet, Trevor stood out as one of the more engaged and interested students in the class.

Trevor's performance in my patent law class ranks among the top few students of the past three years. He appears to have an inquisitive mind, a dedicated work ethic, and significant legal talent. I believe Trevor will do well as a law clerk. For example, in my class, each student is required to be "on call" for at least one three-hour class, meaning that student and two or three colleagues will have prime responsibility for responding to questions about that week's reading. During his turn, Trevor did quite well. I recall, for example, his showing a good understanding of the subtle differences between the doctrines of exhaustion and implied license. Trevor's ability to grasp and articulate such differences between complex legal theories suggests he will do well as a law clerk and, ultimately, as an attorney.

I understand Trevor grew up and worked on a farm when he was younger. Coming from that background, his biomedical engineering degree and success at Georgetown Law suggest a keen mind and a strong intellect. His grade in my class – an A, which is impressive, given the subject matter – confirms both.

I highly recommend Trevor for consideration as a law clerk, and am more than happy to discuss my recommendation.

Sincerely,



Joseph A. Micallef

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

May 01, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Trevor Rhodes for a judicial clerkship. Mr. Rhodes will excel in this role.

Mr. Rhodes was a student in my Legal Practice class during his first year at Georgetown Law. Legal Practice is a year-long legal research and writing course, organized so that students research and write (and re-write, and re-write again) a number of increasingly complex assignments throughout the year. The Fall semester focuses on objective memoranda, while in the Spring we turn to persuasive advocacy. Throughout the year, I also include a number of smaller units designed to introduce students to other practical lawyering skills such as oral argument and writing for a variety of audiences.

Because Legal Practice is a year-long class, no grade is awarded until the end of the year, and because Georgetown switched to mandatory Pass/Fail in Spring 2020 (due to the pandemic), the only "grade" that I could award for the entire year was a "Pass" (or "Fail"). Mr. Rhodes, however, did far more than "pass" the class. His work was easily in the top fifteen of my fifty-two students on every measure. He paid close attention to both the bigger picture and the necessary details. Indeed, as to the latter measure, Mr. Rhodes had a perfect score on a test that I give to measure facility with citation, grammar, punctuation, and similar items.

Mr. Rhodes has seized additional opportunities to hone his research and writing skills, including as an Executive Editor of Georgetown's Annual Review of Criminal Procedure. He has also pursued such opportunities in practice settings including legal intern positions with both the U.S. Department of Health and Human Services and the U.S. Attorney's Office for the District of Columbia where he prepared both written and oral presentations of his legal research and evidentiary findings on a wide variety of topics.

Mr. Rhodes' success is all the more remarkable in light of his having a degenerative eye disease. At the beginning of his first semester, Mr. Rhodes contacted me directly to discuss the minor accommodations necessary for him to thrive in my classroom. I appreciated his forthrightness on the subject and that he arrived with logical and easily implemented solutions at the ready.

Mr. Rhodes' disability had no discernible negative impact on his ability to produce top-level work in my (often quite difficult) class. Indeed, he brought a welcome diverse perspective to the discussion. Mr. Rhodes has more than risen to the challenge of his limited eyesight. The lessons that he has learned have resulted in skills that will be an asset in any workplace, including the discipline to listen closely and the creativity to solve whatever obstacles he may encounter.

Mr. Rhodes is motivated to pursue a judicial clerkship for several reasons. Top among them is Mr. Rhodes' determination that, as a future litigator, a clerkship offers unparalleled opportunities to learn the system from the inside out. He also appreciates the opportunity for exposure to a wide variety of substantive areas—a particular advantage for someone like Mr. Rhodes with wide-ranging interests, spanning intellectual property, health law, and criminal law. Finally, Mr. Rhodes has worked hard at Georgetown, and he sees a clerkship as an excellent way to put all he has learned toward the public good.

I recommend Mr. Rhodes to you with no hesitation.

Sincerely,

Rima Sirota

Rima Sirota - rs367@law.georgetown.edu - (202) 353-7531

Trevor Rhodes

Writing Sample

May 2021

I wrote this memorandum for my Legal Writing Class at Georgetown. My professor gave us a fact pattern describing a compilation of information called “Flagship.” We were to write a memorandum discussing whether “Flagship” was a trade secret. I only had five days to research relevant cases, analyze case law, and write the memorandum. My professor restricted my query to only Alabama case law and some specific cases were excluded. The word limit was 1350 words. Because of the short word limit, this memorandum contains no “Facts” section.

For context, CollegeRenter is a real estate company that buys and sells apartment buildings and leases apartments within those buildings. CollegeRenter developed an electronic database called “Flagship” which contains information about many apartment buildings. CollegeRenter uses Flagship to determine the value of a building and to set apartment rental rates. This memorandum discusses whether Flagship is a “trade secret” under Alabama law.

MEMORANDUM

To: Law Firm

From: Trevor Rhodes

Date: November 20, 2019

Re: CollegeRenter—“Trade secret” status for “Flagship” compilation of information

Question Presented

Under Alabama law, is CollegeRenter’s compilation of information, Flagship, a “trade secret”?

Brief Answer

Flagship is likely a “trade secret” because all six elements are met. Flagship influences CollegeRenter’s purchases of buildings and thus is “used in a business.” Flagship is “embodied in a compilation” because it is compiled apartment building data. CollegeRenter developed Flagship itself and has not shared it with the public, likely rendering it not “publicly known” and not “generally known in the trade.” Flagship is likely “not readily ascertainable” from public information because CollegeRenter spent two years gathering the information. Password protecting and labeling Flagship confidential, among other precautions, are likely “reasonable efforts” to protect its secrecy. Flagship is the main reason for CollegeRenter’s success, therefore having “significant economic value.”

Discussion

Information is a “trade secret” when it is (1) “used in a business,” (2) “embodied in a compilation,” (3) “not publicly known and not generally known in the trade,” (4) “not readily ascertainable” from public information, (5) the subject of “reasonable efforts” in the circumstances to keep the information secret, and (6) of “significant economic value.” Ala. Code

§ 8-27-2(1) (2019). Flagship identifies which buildings CollegeRenter should purchase, meeting the first element. Flagship is a compilation of information from thousands of apartments, meeting the second element. Additionally, Flagship has “significant economic value” because it is crucial to the company’s success.

However, whether the third, fourth, and fifth elements are met is less clear, so these elements are analyzed below. First, this memo explains that Flagship is likely “not publicly known and not generally known in the trade.” Second, this memo explains that Flagship is likely “not readily ascertainable from public information.” Lastly, this memo explains that CollegeRenter’s attempts to keep the information secret are very likely “reasonable efforts.”

(3) Not Publicly Known and Not Generally Known in the Trade

Flagship is likely “not publicly known and not generally known in the trade.” Information meets this element if (1) specific parts of the information are unknown to the public and to those in the same trade as the holder; or (2) if those who know the complete information are partners in a joint venture. See, e.g., Ex parte W.L. Halsey Grocery Co., 897 So. 2d 1028, 1034 (Ala. 2004). If the information is not “generally known in the trade” it has also been considered not “publicly known.” See, e.g., id. The grocery’s “trade secret” was a compilation of its customer and general business information into one document. Id. Although a competitor could determine some of the information, because “the average businessman in the grocery store trade will not know” all the information, the information was not “generally known in the trade.” Id. Customer lists were not “generally known in the trade” because the information was created and developed by Movie Gallery and was specific to its clients and customers. Movie Gallery US, LLC v. Greenshields, 658 F. Supp. 2d 1252, 1263-64 (M.D. Ala. 2009). Delta Machinery shared its flesh-sensing technology with four other companies who were its partners in a joint venture; the technology

remained “not known generally in the trade.” Ex parte Delta Int’l Mach. Corp., 75 So. 3d 1173, 1180 (Ala. 2011).

No evidence exists showing all of Flagship is known by anyone other than those in CollegeRenter and Saban’s Real Estate (Saban’s). Because Flagship is more comprehensive than the compilations of competitors, it must contain more information. Like the document in W.L. Halsey, because *all* the information is not known by competitors, Flagship is not “generally known in the trade.” See 897 So. 2d at 1034. Flagship was also compiled by CollegeRenter and contains many details about the company’s business (apartment buildings). Therefore, like the information in Movie Gallery, this information is not “generally known.” See 658 F. Supp. 2d at 1264. CollegeRenter grants Saban’s, a partner in a joint venture, access to Flagship. Like in Delta, this does not affect whether the information is “generally known in the trade.” See 75 So. 3d at 1180.

(4) Not Readily Ascertainable

Flagship is likely “not readily ascertainable” from public information. This element is met if specific parts of the information are not available to the public, or if “substantial resources” were invested acquiring the information. See, e.g., Pub. Sys., Inc. v. Towry, 587 So. 2d 969, 972-73 (Ala. 1991). In Delta, much of the flesh-sensing technology was exposed in legal trials and patents. 75 So. 3d at 1180. Because some parts of the information were not public, the information was “not ascertainable” from public information. Id.

No cases available held information was “not readily ascertainable” based solely on the efforts required to obtain the information. In all cases at least some information has been unavailable to the public. E.g., 658 F. Supp. 2d at 1264 (holding that if a competitor obtained information from hundreds of stores over thousands of miles, some information would still not

be available because it was subject to confidentiality agreements). However, this element's purpose was to prevent information from being "trade secrets" that was available to the public and did not require "substantial time" to obtain. Section 8-27-2 Comment. Also, some cases imply that if a company invested "substantial time" obtaining information, it is "not readily ascertainable." In Public Systems, a data program containing publicly available information was "readily ascertainable" because the company spent several years *determining* what information *to obtain*, instead of actually *obtaining* information. 587 So. 2d at 972-73. Therefore, if the company had spent "substantial time" gathering the information, it likely would have been "not readily ascertainable." See id.

Because Bonner, CollegeRenter's CEO, admits that the information in Flagship is obtainable by anyone, whether it is "not readily ascertainable" depends on whether a court would find that it took "substantial time" to gather the information. Flagship was developed in two years and requires three researchers to keep the information current. It contains approximately twenty-five data points on 10,000 properties. Although we have no indication from the courts what is "substantial time," such a vast investment would likely be enough. This investment is likely greater than that required in Movie Gallery for a competitor, traveling thousands of miles to hundreds of stores, to obtain customer lists. 658 F. Supp. 2d at 1264. Again, all information on those customer lists was not available if competitors went to the stores, so "substantial time" was not the sole reason the lists were "not readily ascertainable." Id.

(5) Reasonable Efforts

CollegeRenter very likely used "reasonable efforts" in the circumstances to keep Flagship secret. This element is met if the holder limits access to the information, informs those with access of its confidentiality, and requires those with access outside of the business to sign

confidentiality agreements. See, e.g., 897 So. 2d at 1035. Password protecting computers containing the “trade secret” and marking the information as “confidential” were “reasonable efforts.” Unisource Worldwide, Inc. v. S. Cent. Ala. Supply, LLC, 199 F. Supp. 2d 1194, 1210 (M.D. Ala. 2001), Entering into confidentiality agreements with joint venture partners who had access to the “trade secret” were “reasonable efforts.” 75 So. 3d at 1180.

Like the company protecting secrets in Unisource Worldwide, CollegeRenter limits access to its information by password protecting its computers and informs those with access of its confidentiality by marking Flagship “confidential.” Id. Additionally, CollegeRenter grants regular access to only six employees, although three more employees have accessed the information in the past three years. However, the number of employees that have accessed the information is not dispositive of “reasonable efforts.” See Ex parte Indus. Warehouse Servs., Inc., 262 So. 3d 1180, 1185-87 (Ala. 2018) (holding that the bills of lading were “trade secrets” even though IWS shared the information with its employees). Like Delta Machinery, CollegeRenter required its partner, Saban’s, to sign a confidentiality agreement. 75 So. 3d at 1180.

Applicant Details

First Name **Jacinda**
 Middle Initial **D**
 Last Name **Rivas**
 Citizenship Status **U. S. Citizen**
 Email Address jdr345@cornell.edu

Address

Address

Street

2035 North Neva Avenue

City

Chicago

State/Territory

Illinois

Zip

60707

Country

United States

Contact Phone Number **7733830906**

Applicant Education

BA/BS From **University of Kentucky**
 Date of BA/BS **May 2019**
 JD/LLB From **Cornell Law School**
<http://www.lawschool.cornell.edu>

Date of JD/LLB **May 13, 2023**

Class Rank **I am not ranked**

Law Review/Journal **Yes**

Journal(s) **Journal of Law and Public Policy**

Moot Court Experience **Yes**

Moot Court Name(s) **Langfan Family First-Year Moot Court Competition**
Francis P. Cuccia Family Moot Court Competition

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	Yes
Post-graduate Judicial Law Clerk	No

Specialized Work Experience**Professional Organization**

Organizations	Just the Beginning Foundation
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Recommenders

Whorton, Amanda
awhorton@cornell.edu
(607) 255-3504
Nobles, Katrina
kn64@cornell.edu
Brundige, Elizabeth
eb456@cornell.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Jacinda Rivas
2035 N. Neva
Chicago, IL. 60707

The Honorable Judge Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

June 11, 2023

Dear Judge Walker,

I am a recent graduate of Cornell Law School. I am writing to apply for a clerkship in your chambers for the next available term.

I am confident that I could contribute meaningfully to the Court's work. As an extern for Judge Thomas M. Durkin in U.S. District Court for the Northern District of Illinois, I wrote thorough and precise bench memoranda. In addition to my work experience, I have extensive experience in legal writing through my extracurricular activities and course work. I served as the Membership Director for the Journal of Law and Public Policy. In addition, I currently serve as the Teaching Assistant for the Principles of American Legal Writing course, which involves mentoring L.L.M. students on their legal writing. I am also a senior member of Cornell's Gender Justice Clinic, where I am continuing to develop my research and writing skills by drafting briefs for the Inter-American Commission on Human Rights. These experiences have trained me to think and write clearly about complex legal questions, which would enable me to be an effective judicial clerk.

A resume, unofficial law school transcript, and writing sample are enclosed. Letters of recommendation from Cornell Law School professors Brundige, Nobles and Whorton will follow.

Please let me know if I can provide you with any additional materials to assist you in your decision. Thank you in advance for your consideration.

Sincerely,



Jacinda Rivas

JACINDA RIVAS

773-383-0906 – jdr345@cornell.edu – www.linkedin.com/in/jacinda-rivas

EDUCATION

Cornell Law School – Ithaca, NY.

Juris Doctorate – May 2023

GPA: 3.442

Honors: Dean's List, Spring 2022, Fall 2022 & Spring 2023

Journal of Law and Public Policy, Membership Director

Activities: Principles of American Legal Writing, Teaching Assistant to Professor Amanda Whorton

Latin American Law Students Association, Academic Chair

Cornell Law School Faculty Committee, Diversity Chair

2021 Francis P. Cuccia Family Moot Court Competition, Octo-finalist

University of Kentucky – Lexington, KY.

B.A. in Political Science, B.A. in Environment and Sustainability Studies, and B.A. in Philosophy – May 2019

Honors: Summa Cum Laude

University of Kentucky Urban Debate Scholarship, Recipient

Activities: Intercollegiate Debate Team, President

Political Science Department, Research Assistant to Professor Michael A. Zilis

Student Leadership Council, Forensics Representative

PROFESSIONAL EXPERIENCE

Lead Complainant's Code Counselor

Cornell University – Ithaca, NY. – April 2021 – Present

- Advised clients regarding Policy 6.4 and the Office of Institutional Equity and Title IX processes.
- Prepared for direct and cross-examination of complainants, defendants, and witnesses at a Title IX hearing.
- Drafted and reviewed documents pertaining to investigations and hearings.
- Interviewed clients to understand their experiences and identify potential witnesses and evidence.

Summer Associate

Blank Rome – New York, NY. – May 2022 – July 2022

- Researched statutes, case law, and regulations to analyze litigation, maritime, and environmental issues.
- Composed memorandums explaining the best arguments and likely outcomes of motions and settlements.
- Communicated my research findings and legal analyses to partners and senior associates to inform their next steps.
- Conducted research and analyzed expert testimony to ensure they provided consistent statements.

Judicial Extern to the Honorable Thomas M. Durkin

U.S. District Court – Northern District of Illinois – Chicago, IL. – June 2021 – August 2021

- Drafted opinions and legal memoranda, including a motion to dismiss for an employment discrimination matter.
- Conducted legal research regarding criminal, civil, and constitutional matters on the docket.
- Observed and discussed the daily court proceedings with Judge Durkin and the law clerks.
- Attended pre-trial hearings and trials to familiarize myself with courtroom procedure.

Paralegal

Ben Crump Law Firm – Chicago, IL. – June 2019 – July 2020

- Interviewed potential clients per day to evaluate the firm's ability to handle the case.
- Assembled legal documents in preparation for filing on behalf of a supervising attorney.
- Organized and updated the client database to ensure all case developments are documented.
- Corresponded with news outlets and other media to fulfill requests regarding high profile cases.

INTERESTS & HOBBIES

- Chicago Cubs
- Coaching Debate
- Cooking
- Spin Classes

Cornell Law School - Grade Report - 06/02/2023

Jacinda D Rivas

JD, Class of 2023

Course	Title	Instructor(s)	Credits	Grade
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Fall 2020 (8/25/2020 - 11/24/2020)

LAW 5001.5	Civil Procedure	Rachlinski	3.0	B
LAW 5021.3	Constitutional Law	Dorf	4.0	B
LAW 5041.2	Contracts	Anker	4.0	B
LAW 5081.4	Lawyering	Fongyee Whelan	2.0	B+
LAW 5151.2	Torts	Heise	3.0	B+

	Total Attempted	Total Earned	Law Attempted	Law Earned	MPR Attempted	MPR Earned	MPR
Term	16.0	16.0	16.0	16.0	16.0	16.0	3.1031
Cumulative	16.0	16.0	16.0	16.0	16.0	16.0	3.1031

Spring 2021 (2/2/2021 - 5/7/2021)

LAW 5001.1	Civil Procedure	Clermont	3.0	B+
LAW 5061.1	Criminal Law	Corn	3.0	C
LAW 5081.4	Lawyering	Fongyee Whelan	2.0	B+
LAW 5121.2	Property	Sherwin	4.0	B-
LAW 6011.1	Administrative Law	Rogers	3.0	B-

	Total Attempted	Total Earned	Law Attempted	Law Earned	MPR Attempted	MPR Earned	MPR
Term	15.0	15.0	15.0	15.0	15.0	15.0	2.7560
Cumulative	31.0	31.0	31.0	31.0	31.0	31.0	2.9351

Fall 2021 (8/24/2021 - 12/3/2021)

LAW 6101.1	Antitrust Law	Hay	3.0	B+
LAW 6131.1	Business Organizations	Hockett	3.0	B+
LAW 6641.1	Professional Responsibility	Wendel	3.0	B+
LAW 7871.301	Labor Law Clinic	Cornell	4.0	A-

	Total Attempted	Total Earned	Law Attempted	Law Earned	MPR Attempted	MPR Earned	MPR
Term	13.0	13.0	13.0	13.0	13.0	13.0	3.4346
Cumulative	44.0	44.0	44.0	44.0	44.0	44.0	3.0827

Spring 2022 (1/25/2022 - 5/2/2022)

LAW 6027.1	Campus Mediation Practicum	Nobles	4.0	A
LAW 6301.202	Directed Reading	Rana	2.0	SX
LAW 6401.1	Evidence	Weyble	4.0	S
LAW 6861.606	Supervised Teaching	Whorton	2.0	SX
LAW 7411.101	Law and Higher Education	Guard	3.0	A

	Total Attempted	Total Earned	Law Attempted	Law Earned	MPR Attempted	MPR Earned	MPR
Term	15.0	15.0	15.0	15.0	7.0	7.0	4.0000
Cumulative	59.0	59.0	59.0	59.0	51.0	51.0	3.2086

^ Dean's List

Fall 2022 (8/22/2022 - 12/16/2022)

LAW 6029.101	Campus Mediation Practicum II	Nobles	4.0	A+
LAW 6861.610	Supervised Teaching	Whorton	2.0	SX
LAW 7914.301	Gender Justice Clinic	Brundige/Lee	6.0	A

	Total Attempted	Total Earned	Law Attempted	Law Earned	MPR Attempted	MPR Earned	MPR
Term	12.0	12.0	12.0	12.0	10.0	10.0	4.1320
Cumulative	71.0	71.0	71.0	71.0	61.0	61.0	3.3600

^ Dean's List

Spring 2023 (1/23/2023 - 5/16/2023)

LAW 6265.1	Critical Race Theory	Young	3.0	A			
LAW 6431.1	Federal Courts	Gardner	4.0	S			
LAW 6437.1	Federal Practice and Procedure	Nathan	1.0	SX			
LAW 6861.604	Supervised Teaching	Whorton	2.0	SX			
LAW 7915.301	Gender Justice Clinic II	Brundige/Lee	6.0	A			
	Total Attempted	Total Earned	Law Attempted	Law Earned	MPR Attempted	MPR Earned	MPR
Term	16.0	16.0	16.0	16.0	9.0	9.0	4.0000
Cumulative	87.0	87.0	87.0	87.0	70.0	70.0	3.4422

^ Dean's List

Total Hours Earned: 87

Received JD on 05/28/2023

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to enthusiastically recommend Jacinda Rivas for a clerkship position in your chambers. I believe she will make an excellent clerk due to her collaborative attitude, strong writing and editing skills, and personal interests.

I have known Jacinda for approximately one year as a Teaching Assistant in my Principles of American Legal Writing course for the Spring 2022, Fall 2022, and Spring 2023 semesters at Cornell Law School. In this course, I teach international LL.M. students how to draft certain legal documents in the United States, including memos and legal briefs. In her role as a Teaching Assistant for me, Jacinda regularly counsels students on their legal writing, providing feedback and comments on student papers, and giving presentations on proper citation format.

Jacinda has extraordinary people skills—she is friendly with everyone she meets and is able to clearly and confidently communicate complex ideas, like American legal writing techniques. American legal writing can be a particularly challenging class for students from different countries, with a wide range of proficiency in English, and with an array of legal writing backgrounds. Jacinda's instruction and communication with students is clear and complete, and she is careful to tailor her advice to the needs of the specific student instead of just sharing the material in a way she learned as a J.D. student. Her friendly, good-humored nature would be an asset to your chambers.

In providing insightful comments on student writing, Jacinda is able to explain American legal writing expectations to students of various skill levels, and thus, improve her own outstanding legal writing through the experience. Additionally, she provides advice to students in a way that is accurate, while helping the students learn and feel positive about their growth as legal writers. Jacinda always meets any deadlines that I set, even in the midst of her own demanding course work.

I also have had the privilege of getting to know Jacinda on a personal level. Additionally, she enjoys coaching high school and college debate teams, which allows her to examine and research all sides of an issue before honing her argument.

I have asked Jacinda to come back as a Teaching Assistant for multiple semesters because of her strong writing, editing, and communication skills. She has been one of my best Teaching Assistants throughout my time as a professor, and I have no doubt that she would excel as a clerk in your chambers. I highly recommend her for a clerkship position. If you have further questions, please do not hesitate to contact me.

Sincerely,

Professor Amanda Whorton
Cornell Law School
awhorton@cornell.edu

Amanda Whorton - awhorton@cornell.edu - (607) 255-3504



February 3, 2023

**Letter of Recommendation
Jacinda Rivas**

Jacinda Rivas has asked me to write a letter of recommendation in support of her application for a judicial clerkship, and I am pleased to do so. I met Jacinda in the spring semester of 2022 when she was a student in a course I teach called The Campus Mediation Practicum (LAW 6027). Jacinda was an excellent student in the course, and consequently enrolled in the Campus Mediation Practicum II (LAW 6029) to continue her practice and research from the first course, as well as mentor students taking LAW 6027 in the fall of 2022.

The Campus Mediation Practicum is a course in which students both learn and apply mediation skills. In the first segment of the course, students are introduced to the guiding principles of mediation and restorative justice. In the second segment, students are assigned to mediate cases referred to the program regarding student conduct. Students who have already taken LAW 6027 work with new student mediators as mentors. Additionally, students research and explore various topics connected with campus mediation and restorative justice for their final project.

Over the course of the past 12 months, I got to know Jacinda quite well. She has been able to fully embrace the subject area, one which falls outside of the typical Law School curriculum. As part of that embrace, Jacinda has excelled through her ability to communicate clearly in real time, spur of the moment situations, such as reflecting, summarizing, and reframing party statements in mediation clearly, concisely and coherently. In addition, Jacinda is able to create party-specific verbal communication, meaning she is able to easily connect with a diverse population of students and staff. Her written communication skills also stood out among her classmates. In her second semester, Jacinda researched and wrote about the processes associated with the student code of conduct at Cornell University. She clearly articulated the advantages and disadvantages of the current system, while providing solutions for the shortcomings of the current system, particularly focusing on systemic issues, power dynamics, and a need for training and community partner development. Through this research, Jacinda was able to highlight her expertise and ability to effectively advocate through her familiarity with the judicial system as a complainant's codes counselor and mediator.

In my experience, Jacinda is hardworking and eager to step into every learning opportunity possible. she readily volunteered for any mediation fitting her schedule, as well as additional conversations with me and student mentors to increase her skill level. In addition to seeking out opportunities and feedback, Jacinda stepped into the role of mentor in her second semester with the Campus Mediation Practicum seamlessly. She was able to successfully work with undergraduate, graduate and other law students to improve their mediation skills, while continuing to improve her own. During the second semester with her classmates and our community partners, Jacinda was also able to clearly advocate for the enactment of diversity, equity and inclusion practices in both our understanding of the judicial system at Cornell, as well as the implementation of individual processes and practices.

Personally, I have enjoyed my experiences with Jacinda very much, and I am confident she will be a conscientious, capable, and hard-working clerk. I have no reservations whatsoever regarding her commitment to her studies and work within the legal realm. In sum, I recommend Jacinda for the judicial clerkship with enthusiasm.

Sincerely,

A handwritten signature in black ink that reads "Katrina G. Nobles".

Katrina G. Nobles
Director of Conflict Programs
Scheinman Institute on Conflict Resolution
ILR School
Cornell University

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am delighted to write this letter in support of Jacinda Rivas's application for a judicial clerkship. Jacinda has been a member of my Gender Justice Clinic since August 2022. The Clinic involves a small number of students working closely with each other and the Clinic's faculty on projects that address gender-based violence and discrimination, and I have had the opportunity to get to know Jacinda well. Her thoughtfulness, diligence, strong research and writing skills, collaborative approach to teamwork, and commitment to public service make her an excellent clinic student and equip her well to serve as an effective judicial law clerk.

As a Clinic student, Jacinda has been part of a team that is developing a report on gaps and challenges in the Peace Corps' efforts to prevent and respond to sexual violence experienced by its volunteers. Jacinda and her teammates have researched Peace Corps policy, analyzed the qualitative and quantitative data that the clinic previously gathered through an online survey and interviews with former volunteers and are now using this research and analysis to draft an action-oriented report. Jacinda's work products, which have focused on the Peace Corps' response to reports of sexual violence or harassment, have been well written, reflecting thorough research and careful analysis. Jacinda has also diligently responded to feedback, reviewing comments and edits closely and responding to them effectively to ensure the success of the team's final draft. Jacinda has also contributed actively to strategic discussions about the future work that will follow publication of the report, from policy advocacy to possible impact litigation.

In her first semester in the Clinic, Jacinda also helped develop and deliver a public workshop entitled "Our Bodies, Their Laws: Reproductive Justice After the Fall of Roe." Part of a campus-wide collaboration, the workshop explored the implications of the Supreme Court's June 2022 decision in *Dobbs v. Jackson Whole Women's Health Organization* that ended the federal constitutional right to abortion. As a panelist, Jacinda provided an historical overview of abortion rights in the United States, reflected on the impact and implications of the *Dobbs* decision for communities that are likely to face disproportionate harm, and suggested ways students might advocate for themselves, their communities and those affected around the country in a post-*Dobbs* world. Jacinda engaged in extensive research and planning for this event, and she was an eloquent and thoughtful speaker, highlighting the importance of learning from history, building diverse and inclusive movements, and exploring creative approaches to advocacy. She was also an active and perceptive participant in the discussion that followed with the panelists and participants.

This semester, in addition to her work on the Peace Corps project, Jacinda is part of a team that is representing twenty-seven survivors of military sexual assault in two petitions to the Inter-American Commission on Human Rights, as well as engaging in related advocacy at the United Nations. This semester, the team's efforts are focused on preparing merits briefs and related supporting evidence to submit the Inter-American Commission. In her first week on the project, Jacinda and a teammate developed a thoughtful outline for the Clinic's brief, which will guide our research and writing. She has also played an important leadership role for her team, which includes several new clinic members. Jacinda has volunteered for important administrative and substantive tasks, helped organize the team's work to get it off to an effective start, and modeled diligence and a spirit of collaboration.

As a clinic member, Jacinda has been thoughtful, hard-working, and compassionate. Her valuable contributions to the Gender Justice Clinic is reflected in the strong A she received in the course after her first semester. This was mirrored by an extremely strong performance in her other classes and membership on the Dean's List in both fall and spring 2022. Jacinda was grappling with a serious family medical issue throughout her first year in law school, and this is reflected in her lower grades that year. Her continued engagement and success in law school since then demonstrates her resilience and perseverance in the face of challenges, qualities that will serve her well as a judicial law clerk.

This engagement has extended beyond Jacinda's courses and clinical experiences. Jacinda is Cornell University's Lead Complainant's Code Counselor, overseeing and participating on a team of law students who provide advocacy and case support to individuals who experienced violations of Cornell's Student Code of Conduct or Policy 6.4, including sexual violence, harassment, and gender discrimination. She has been an editor and membership director of the *Journal of Law and Public Policy*; a teaching assistant for Principles of American Legal Writing, a course for LLM students; Academic Chair of the Latin American Law Students Association; and student representative to the Cornell Law School Faculty Committee on Diversity. In her law school summers, Jacinda served as a summer associate at Blank Rome in New York and as a judicial extern to the Honorable Thomas Durkin of the U.S. District Court for the Northern District of Illinois.

Jacinda's dedication, determination, strong research and writing skills, collaborative leadership style, and commitment to public service make her an excellent candidate for a clerkship position. I recommend her enthusiastically. Please do not hesitate to contact me should you need any additional information.

Sincerely,

Elizabeth Brundige

Elizabeth Brundige - eb456@cornell.edu

Clinical Professor of Law
Cornell Law School

Elizabeth Brundige - eb456@cornell.edu

JACINDA RIVAS

773-383-0906 – jdr345@cornell.edu – www.linkedin.com/in/jacinda-rivas

Writing Sample

The writing sample is a memorandum of law which I wrote for my first-year Lawyering course. The memorandum examines an issue of statutory interpretation in the context of religious beliefs. I conducted all the research necessary for the assignment. By the assignment's instructions, the memorandum could not exceed 8 pages.

Plaintiff, Terry Lindberg, respectfully submits this memorandum of law in support of his motion for partial summary judgment. Specifically, Mr. Lindberg seeks a partial summary judgment holding that his beliefs are religious.

Statement of Undisputed Facts

Mr. Lindberg was Committed to Doing an Excellent Job at Crestview

For ten years, Mr. Lindberg worked for the Crestview Nursing Home. *See* Evid. Hr’g Tr. 3:7-8. He worked as a registered nurse, where he was responsible for taking vital signs, administering medication, performing assessments, carrying out doctors’ orders and completing paperwork regarding medication intakes. *See id.* at 3:11-15. He also took on supervisory responsibilities over other employees such as the nursing assistants and other health aides. *See id.* at 3:15-16. While working at Crestview, Mr. Lindberg took classes to obtain a license in nursing home administration. *See id.* at 5:16-23.

In October 2018, Crestview promoted Mr. Lindberg to nursing home administrator, which put him in charge of the facility. *See id.* at 3:18-19. This promotion was one of several Mr. Lindberg received while working for Crestview. *See id.* at 5:14-15. He managed the day-to-day operations, including “hiring, training, and terminating staff; ensuring compliance with local, state and federal regulations; . . . and troubleshooting any issues.” *See id.* at 3:21-25. Mr. Lindberg assisted with patient care on fifteen occasions while working as the administrator. *See id.* at 5:42-44. Thus, the position requires little to no patient care. *See id.* at 5:36-37.

Mr. Lindberg Extended His Dedication to His Faith

In October 2018, Mr. Lindberg adopted his faith. *See id.* at 4:27. His belief developed shortly after he received the flu vaccine and got very sick: he experienced severe headaches and chills before catching the flu, which was “the sickest that [he] had ever been.” *See id.* at 4:27-30. The sickness led him to consider his existence. *See id.* at 4:31. He saw a connection between his

interactions with the Universe and what happened to him physically. *See id.* at 4:32-33. He believes that if he did not respect and honor the world, it would not respect him. *See id.* at 4:33-34. For people to live in harmony with the Universe, they must consume the minimum needed to survive, and give thanks before removing anything from the Universe. *See id.* at 6:38-40. According to Crestview, Mr. Lindberg's religion does not address how human beings came into existence or what happens when they die. *See id.* at 9:35-36. Nor is there a deity to which they pray. *See id.* at 4:18. The religion does, however, acknowledge that the Universe should be in harmony *See id.* at 4:18-19. Consequentially, every day is a religious holiday *See id.* at 6:44.

Mr. Lindberg's religion teaches people to respect all living things. *See id.* at 3:40-41. He started eating only for sustenance, and he gives thanks before ingesting any food. *See id.* at 4:34-36. If he does not, he dishonors and disrespects the Universe and the plant or animal that gave its life. *See id.* at 3:41-44, 4:1-2. If he does not honor or respect the plant or animal, bad things will happen. *See id.* at 4:11-12. There is no evidence that anyone thanked the chickens or the fertilized eggs for their service in making the flu vaccine, and thus Mr. Lindberg believes it would be disrespectful to allow the product to be injected in his body. *See id.* at 4:5-7. The potential consequences of taking the vaccine include physical ailments, such as sore muscles at the spot of injection, headaches, flu-like symptoms, or the flu itself. *See id.* at 4:14-16.

Mr. Lindberg Holds Fast to His Faith in the Face of Termination

Mr. Lindberg applied for his first religious exemption to the flu vaccine in 2019. *See id.* at 8:29. He completed the religious exemption application and explained his claim, including a description of his religion. *See id.* at 8:31-33. The executives in charge of exemptions reviewed his application. *See id.* at 8:33-34. They denied Mr. Lindberg's claim because they thought that his beliefs were personal and secular. *See id.* at 8:36-38. While there are staff at Crestview who

claim exemptions, “Crestview has never granted a religious exemption to anyone practicing a non-traditional religion.” *See id.* at 8:25-26; 10:7-8. Mr. Lindberg’s beliefs are non-traditional because his religion not one that a person often hears about, such as Islam, Judaism, or Catholicism. *See id.* at 9:22-29. The nontraditional nature of his beliefs was “one of the reasons why Crestview denied him the exemption.” *See id.* at 9:30-31.

Mr. Lindberg held the position as the nursing home administrator until September 2019 when Crestview fired him for refusing to take the flu vaccine. *See id.* at 3:35. He has not applied to any jobs as a nursing home administrator because, among other reasons, they require the staff to be vaccinated against the flu. *See id.* at 6:10-17. Nursing homes with low staff vaccination rates might have trouble getting people to send their loved ones. *See id.* at 10:15-20. Thus, Mr. Lindberg has been out of work and unable to find a job. *See id.* at 4:43.

Argument

The moving party is entitled to a partial summary judgment when there is no genuine issue to be tried in the case, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). When the moving party provides factual support for its allegations, the adverse party may not defeat the motion by resting on mere conclusory allegations with no supporting legal arguments or factual submissions. *See SEC v. Research Automation Corp.*, 585 F.2d 31, 33 (2d Cir. 1978).

The courts have forth three useful indicia of religion:

First, a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters. Second, a religion is comprehensive in nature; it consists of a belief-system as opposed to an isolated teaching. Third, a religion often can be recognized by the presence of certain formal and external signs.

See Africa v. Com. of Pa., 662 F.2d 1025, 1032 (3d Cir. 1981).

I. Mr. Lindberg's Beliefs Address Fundamental and Ultimate Questions.

A. A Belief Is a Religion if It Addresses Fundamental and Ultimate Questions.

First, a belief is a religion if it addresses fundamental and ultimate questions having to do with deep and imponderable matters. *See Africa*, 662 F.2d at 1032. Ultimate questions are those concerning right and wrong, or good and evil. *See id.* at 1033. According to a district court in the Northern District of California, fundamental and ultimate questions must theorize humankind's nature or their place in the universe. *See Conner v. Tilton*, No. C 07-4965, 2009 U.S. Dist. LEXIS 111892, at *30 (N.D. Cal. Dec. 2, 2009). The same court found that imponderable matters are those that are impossible to assess with exactness. *See id.* at *28.

When a person chooses conduct that is desirable for their life, that conduct does not automatically become morally necessary. *See Africa*, 662 F.2d at 1033. Anti-vaccination beliefs can be part of a broader religious faith. *See Fallon v. Mercy Cath. Med. Ctr.*, 877 F.3d 487, 492-93 (3d Cir. 2017). For the objection to the vaccine to be part of a broader religious faith, the objection must be religious rather than medical. *See id.* at 492. A district court in the Western District of Pennsylvania held that dietary beliefs constitute deep and imponderable matters when they go beyond personal dietary preference. *See Hall v. Klemm*, 2017 U.S. Dist. LEXIS 14767, at *28 (W.D. Pa. Feb. 7, 2017). The same court established that the belief that "certain foods will transfer angry animal spirits to [a person's] own mind and body" was a deep and imponderable matter because the belief extends beyond dietary preference. *See id.*

B. Mr. Lindberg's Beliefs Concern Fundamental and Ultimate Questions.

Mr. Lindberg's beliefs address fundamental and ultimate questions involving deep and imponderable matters. *See Africa*, 662 F.2d at 1032. His religion addresses fundamental and ultimate questions because it declares that living in harmony with the Universe means people

should consume the minimum needed to survive, and they should give thanks before removing the food from the Universe. *See id.* These beliefs concern right and wrong because if one does not honor or respect the plant or animal, bad things will happen. *See id.* at 1033. The religion addresses fundamental and ultimate questions because it theorizes regarding humankind and its place in the Universe by acknowledging the Universe and the need for harmony within it. *See Conner*, 2009 U.S. Dist. LEXIS 111892 at *30. These questions are imponderable matters because the belief is incapable of being evaluated with exactness. *See id.* at *28.

If Mr. Lindberg took the vaccine, he would violate his morally necessary because he must thank the animal prior to consumption and the chicken was not thanked prior to fertilizing the eggs for the vaccine. *See Africa*, 662 F.2d at 1033. Mr. Lindberg's anti-vaccination views are grounded in his faith because it would disrespect the Universe to be injected without thanking the chicken. *See id.* His view is a religious objection because if he were to disrespect nature, bad things would happen, which is not limited to health concerns. *See Fallon*, 877 F.3d at 492-93. Mr. Lindberg's beliefs also constitute a deep and imponderable matter because the faith stems from living in harmony with nature. *See Hall*, 2017 U.S. Dist. LEXIS 14767 at *28. Similar to the beliefs in *Hall*, which believes bad things will happen if you consume certain foods, Mr. Lindberg believes the consumption of an animal without honoring it will result in bad things. *See id.* Therefore, as the court did in *Hall*, the Court should determine Mr. Lindberg's beliefs constitute a deep and imponderable matter. *See id.*

II. Mr. Lindberg's Beliefs Are Comprehensive in Nature.

A. A Belief Is Religious if It Is Comprehensive in Nature; It Should Consist of a Belief-System as Opposed to an Isolated Teaching.

Next, a set of beliefs are considered a religion if they are comprehensive in nature; a religion consists of a belief-system as opposed to an isolated teaching. *Africa*, 662 F.2d at 1032.

A belief is comprehensive if its teachings are consciously aimed at answering questions regarding the nature the world and humans. *See id.* at 1035. Thus, the belief is not confined to one question or moral teaching, and instead it has a broader scope. *See id.* An appellate court in Texas found that the test of a whether a belief is comprehensive is if “those convictions are based on a uniform and articulable set of principles which lay a claim to universal application.” *See Strayhorn v. Ethical Soc’y of Austin*, 110 S.W.3d 458, 470 (Tex. App. 2003).

B. Mr. Lindberg’s Beliefs are Comprehensive in Nature.

Mr. Lindberg’s beliefs are comprehensive in nature. *See Africa*, 662 F.2d at 1032. His beliefs are comprehensive because they are consciously aimed at addressing questions concerning how one interacts with the Universe and how it physically affects them, which provide answers regarding the nature of the world and man. *See id.* at 1035. Mr. Lindberg’s beliefs are not isolated to one moral teaching but rather elaborates a connected view of humans and their place in the Universe to create harmony. *See id.* Even though Crestview argues that the religion does not address how human beings came into existence or what happens when they die, it articulates an explanation of harmony in the Universe, which has a broader scope. *See id.* The views are based on a uniform and articulable set of principles, such as what it means to live in harmony with the Universe. *See Strayhorn*, 110 S.W.3d at 470. This view entails that people only consume the minimum to survive, and they give thanks before removing anything from the Universe. *See Evid. Hr’g Tr.* at 6:38-40.

III. Mr. Lindberg’s Beliefs Have Formal and External Signs.

A. A Religion Can Be Recognized by the Presence of Formal and External Signs.

Finally, a religion can often be recognized by the presence of certain formal and external signs. *See Africa*, 662 F.2d at 1032. The signs “include formal services, ceremonial functions, the

existence of clergy, structure and organization, efforts at propagation, observance of holidays and other similar manifestations associated with the traditional religions.” *See id.* at 1035 (citing *Malnak v. Yogi*, 592 F.2d 197, 209 (3d Cir. 1979)). The signs can include any formal or external signs that are analogized to accepted religions. *See id.* However, according to an appellate court in Texas, a religion may exist without any signs; thus, their absence is not dispositive on the question of a belief being religious because whether a belief system concerns ultimate questions and is comprehensive are a more decisive standard for determining if a belief is a religion. *See Strayhorn*, 110 S.W.3d at 471.

B. Mr. Lindberg’s Beliefs Have Formal and External Signs.

Mr. Lindberg’s religion recognizes formal and external signs. *See Africa*, 662 F.2d at 1032. It has formal and external signs because, like other religions, it observes holidays. *See id.* at 1035. Mr. Lindberg’s religion observes holidays because every day is a special day or a religious holiday. *See Evid. Hr’g Tr.* at 6:44. Holidays are a formal sign that is analogized to accepted religions, such as Christmas for Catholics or Eid Mubarak for Muslims. *See id.* at 1035. Though Mr. Lindberg’s beliefs do not have a name or other known followers, those beliefs are still religious because a religion may exist without any signs. *See Strayhorn*, 110 S.W.3d at 470. Even if the Court concludes Mr. Lindberg’s beliefs have no formal or external signs, the Court should still conclude the beliefs constitute a religion because the existence of signs is not dispositive on the question rather the Court should analyze whether the beliefs concern ultimate questions and are comprehensive. *See id.*

Conclusion

For the reasons discussed above, this Court should enter a partial summary judgment in favor of Mr. Lindberg holding that, as a matter of law, his beliefs are religious.

Applicant Details

First Name **Conner**
 Last Name **Robinson**
 Citizenship Status **U. S. Citizen**
 Email Address Connerr@uchicago.edu
 Address

Address
Street
21624 w 177th terr
City
Olathe
State/Territory
Kansas
Zip
66062
Country
United States

Contact Phone Number **9137876414**

Applicant Education

BA/BS From **Kansas State University**
 Date of BA/BS **May 2020**
 JD/LLB From **The University of Chicago Law School**
<https://www.law.uchicago.edu/>
 Date of JD/LLB **June 3, 2023**
 Class Rank **School does not rank**
 Does the law school have a Law Review/Journal? **Yes**
 Law Review/Journal **No**
 Moot Court Experience **No**

Bar Admission**Prior Judicial Experience**

Judicial Internships/
 Externships **No**

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Specialized Work Experience **Appellate, Habeas, Immigration,
Patent, Prison Litigation**

Recommenders

Olaizola Rosenblat, Mariana
olaizola@uchicago.edu

Ides, Allan
allan.ides@lls.edu
(213) 736-1464

Fennell, Christopher
cfennell@illinois.edu

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

353 N. Des Plaines St., Apt. 3903
Chicago, IL 60661
913.787.6414

March 28, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a third-year law student at the University of Chicago Law School, and I am applying for a clerkship in your chambers for the 2024 term. I immigrated to the United States with nothing more than a single suitcase and the memories of a childhood spent on a small farm in Zimbabwe. My voyage from refugee to U.S. citizen ignited my pursuit to become an effective advocate for those who face the same challenges I once did. A federal clerkship is an unparalleled opportunity to meaningfully grow the skills and experiences that will help propel me toward becoming a successful advocate. I believe my background will lend an important perspective to your chambers while also bringing along the ability to collaborate and continuously learn.

I have focused my work and academic experiences on opportunities that allow me to progress in my writing. As a student in UChicago's Constitutions Lab, I researched and wrote scholarship on the constitutional design of federal judiciaries that was delivered to actors to rely on during post-coup constitution building. Moreover, my article concerning Title III of the Americans with Disabilities Act is forthcoming in the *University of Illinois Law Review*. Additionally, I strengthened my research and writing skills in UChicago's Global Human Rights Clinic. There, I worked under Special Rapporteur Clément Voule. My work included writing and sending an amicus brief to the Zimbabwean Parliament asserting the United Nations' objections to a proposed bill limiting the fundamental rights of public volunteer organizations. Furthermore, I developed and delivered a training on how to record human rights violations to activists in Myanmar. In addition to strengthening my research and writing skills, my clinical experience allowed me to cooperate with lawyers, activists, survivors, and many other important and often unheard voices worldwide. Lastly, I will be a litigation associate for a firm in New York City for the time between graduating and clerking.

A resume, transcript, and writing sample are enclosed. Letters of recommendation from Professors Fennel, Ides, and Olaizola Rosenblat will arrive separately. Should you require additional information, please do not hesitate to let me know.

Respectfully,

Conner Robinson

CONNER ROBINSON

21624 W. 177th Terrace, Olathe, KS 66061 § (913) 787-6414 § connerr@uchicago.edu

EDUCATION

THE UNIVERSITY OF CHICAGO LAW SCHOOL, Chicago, IL

Juris Doctor, Expected May 2023

- Activities & Pro Bono: American Constitution Society, First Generation Professionals, Immigration Law Society, International Law Society, National Lawyers Guild, Prison Letter Writing Program, Student Interview Committee, Pro Bono Pledge Student, *Pro Bono Honors*
- *Constitutions Lab*: Researched and wrote scholarship related to constitutional design; produced post-coup constitution building scholarship that provided analysis of existing constitutional performance for constitutional drafters and national publics
- **Article**: *Red Blood Sells*, U. Ill. L. Rev. Online __ (forthcoming 2023)

LMU LOYOLA LAW SCHOOL, Los Angeles, CA

First-year coursework completed toward Juris Doctor, 2020-2021

- Activities: Admissions Office Student Ambassador; Loyola Genocide Justice Clinic, *Clinical Student* (Invitation Extended); Public Interest Law Foundation (1L Representative)

KANSAS STATE UNIVERSITY, Manhattan, KS

Bachelor of Arts in Political Science; Spanish, May 2020

- Honors: Dean's Honor List Student; Putnam Scholarship; Theta Xi Academic Scholarship; June Hill Sherrid Scholarship
- Activities & Volunteering: Big Brothers and Big Sisters (*On-Campus Representative*); Habitat for Humanity; Association of Residence Halls, *Governing Board Member*; International Coordinating Council; Pre-Law Program; Spanish Club
- Thesis: *Ethnic Conflict in Comparative Prospective: Zimbabwe and Uganda*

EXPERIENCE

MOBILIZATION FOR JUSTICE, New York City, NY

Student Attorney, Summer 2022

- Worked alongside attorneys to provide free legal advocacy in the areas of housing; foreclosure; civil, disability and aging rights; bankruptcy, tax, consumer, employment, government benefits, immigration, and kinship care

WILLKIE, FARR & GALLAGHER, New York City, NY

Summer Associate, Summer 2022

GLOBAL HUMAN RIGHTS CLINIC, UNIVERSITY OF CHICAGO LAW SCHOOL, Chicago, IL

Clinical Student, Aug. 2021 – Present

- Use international human rights laws and norms as well as other substantive law and strategies to draw attention to human rights violations, develop practical solutions, and promote accountability on the part of state and non-state actors
- Working alongside international organizations and foreign governments to advance human rights through adjudication in domestic and international fora and other forms of advocacy including fact-finding and documentation, research, legislation, and policy development
- Wrote amicus briefs, intervention letters, and developed and conducted human rights trainings for foreign NGOs

UNITED STATES ATTORNEY'S OFFICE, SOUTHERN DISTRICT OF CALIFORNIA, San Diego, CA

Law Clerk, Affirmative Civil Litigation, May 2021 – Aug. 2021

- Supported Assistant U.S. Attorneys in a number of litigation areas, including health care fraud, & defense procurement fraud, as well as enforcing the Civil Rights Act and the Americans with Disabilities Act
- Researched and wrote legal memoranda on claims under the Federal Tort Claims Act, habeas corpus claims, 8th Amendment jurisprudence, and CDC guidelines jurisprudence
- Analyzed 8th Amendment case law to advise Assistant U.S. Attorneys on the effect of vaccination on claims of unconstitutional confinement
- Recommended and refined deposition strategies for Assistant U.S. Attorneys
- Wrote responses and motions; prepared documents for early neutral evaluations and case management conferences

CITIZENSHIPS & INTERESTS

U.S., Canadian, and Zimbabwean citizenships

Basketball, cooking, hiking, hip-hop & jazz music, non-fiction reading, and soccer



Name: Conner J Robinson
Student ID: 12338456

University of Chicago Law School

Academic Program History

Program: Law School
Start Quarter: Autumn 2021
Current Status: Active in Program
J.D. in Law

External Education

Kansas State University
Manhattan, Kansas
Bachelor of Arts 2020

CREDIT AWARDED FOR ACADEMIC WORK DONE AT LOYOLA LAW SCHOOL- LOYOLA MARYMOUNT U,
2020-2021 39

Spring 2022

Course	Description	Attempted	Earned	Grade
LAWS 40501	Constitutional Law V: Freedom of Religion Mary Anne Case	3	3	181
LAWS 43244	Patent Law Jonathan Masur	3	3	176
LAWS 90225	Global Human Rights Clinic Claudia Flores Mariana Olaizola Rosenblat	3	3	178

Autumn 2022

Course	Description	Attempted	Earned	Grade
LAWS 41101	Federal Courts Curtis Bradley	3	3	175
LAWS 43200	Immigration Law Amber Hallett	3	3	177
LAWS 43224	Admiralty Law Randall Schmidt	3	3	178
LAWS 53299	Class Action Controversies Michael Brody	2	0	

Beginning of Law School Record

End of University of Chicago Law School

Autumn 2021

Course	Description	Attempted	Earned	Grade
LAWS 40301	Constitutional Law III: Equal Protection and Substantive Due Process Geoffrey Stone	3	3	175
LAWS 53218	Law and Public Policy: Case Studies in Problem Solving Stephen Patton	2	2	177
LAWS 53431	Constitutions Lab: Myanmar Thomas Ginsburg Jason Gelbort	3	3	177
LAWS 90225	Global Human Rights Clinic Mariana Olaizola Rosenblat	3	3	178

Winter 2022

Course	Description	Attempted	Earned	Grade
LAWS 40201	Constitutional Law II: Freedom of Speech Geoffrey Stone	3	3	179
LAWS 45001	Family Law Mary Anne Case	3	0	
LAWS 53306	Anthropology and Law Meets Substantial Research Paper Requirement	3	3	182
LAWS 90225	Global Human Rights Clinic Christopher Fennell Mariana Olaizola Rosenblat	2	2	178

INSTITUTION CREDIT										-Top-	
Term: Law Fall 2020											
College:			Law								
Major:			Law								
Student Type:			Law First Time JD								
Academic Standing:											
Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R			
LAWB	1001	JD	Contracts	A	5.000	20.00					
LAWD	1001	JD	Criminal Law	B+	4.000	13.33					
LAWJ	1001	JD	Civil Procedure	YL	3.000	0.00					
LAWJ	1002	JD	Legal Research and Writing	YL	2.000	0.00					
LAWL	1001	JD	Property	YL	2.000	0.00					
Term Totals (Juris Doctor)											
Attempt Hours				16.000	Earned Hours		9.000	Quality Points		GPA	
Current Term:				16.000	9.000		9.000	33.33		3.70	
Cumulative:				16.000	9.000		9.000	33.33		3.70	
Unofficial Transcript											
Term: Law Spring 2021											
College:			Law								
Major:			Law								
Student Type:			Continuing								
Academic Standing:											
Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R			
LAWG	1010	JD	Introduction to International Law	B	3.000	9.00					
LAWJ	1001	JD	Civil Procedure	A	2.000	8.00					
LAWJ	1002	JD	Legal Research and Writing	A-	2.000	7.33					
LAWK	1001	JD	Torts	A-	5.000	18.33					
LAWL	1001	JD	Property	B+	3.000	9.99					
Term Totals (Juris Doctor)											
Attempt Hours				0.000	Earned Hours		0.000	Quality Points		GPA	
Current Term:				0.000	0.000		0.000	0.00		0.00	
Cumulative:				16.000	9.000		9.000	33.33		3.70	
Unofficial Transcript											

March 29, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Conner Robinson of the University of Chicago Law School class of 2023 for a clerkship in your chambers. I taught and supervised Conner during the 2021-2022 academic year while I was Lecturer-in-Law and Global Human Rights Clinic (GHRC) fellow. As a young lawyer of nontraditional background, I believe Conner would make a valuable and unique contribution as a clerk and, ultimately, as a member of the bar.

At the clinic, Conner was part of a team assisting the United Nations Special Rapporteur on Freedom of Assembly and Association to identify global patterns of government persecution of climate change activists. On this team, Conner was one of the lead drafters of an intervention by the Special Rapporteur expressing concern to the Zimbabwean government about draft legislation aimed at restricting the activities of civil society organizations. Along with his collaborators, Conner also produced a mapping and legal analysis of cases pending in courts around the world to inform the Special Rapporteur about opportunities for filing amicus curiae. In the middle of the schoolyear, along with his teammates, Conner additionally conducted a human rights training for activists in Myanmar. Despite language barriers and background differences, Conner made sure the training was accessible and helpful to the activists, explaining complex concepts with patience and clarity.

During the year that I taught and got to know Conner, he grew substantially as a legal thinker and writer. Conner transferred to the University of Chicago Law School from LMU Loyola Law School after his first year of law school, a transition he managed gracefully and maturely. From his first day in the clinic, Conner exuded levelheadedness, kindness towards his peers, and an eagerness to learn. While his writing skills at the beginning of the term were somewhat behind that of his peers, he worked diligently and showed significant improvement by the end of the year. Conner was receptive and responsive to feedback, demonstrating a quiet but noticeable determination to meet the high expectations his instructors set for him. I am confident that Conner would make the most of this clerkship opportunity.

Conner's life experiences and nontraditional background have shaped his passion for community-centered and public-interest law. Conner grew up on a farm in Zimbabwe and later fled to Canada in the wake of growing unrest. He spent the rest of his youth moving between Saskatchewan, Chicago, and Wisconsin, living with relatives before relocating to Kansas, where he finished high school. Conner was the first person in his family to attend higher education. He has a deep appreciation for the challenges faced by marginalized communities and is committed to pursuing a career representing the underrepresented.

Conner was a pleasure to have in the clinic and has displayed maturity and commitment to the practice of law. If you would like to discuss Conner's abilities and accomplishments further, please feel free to contact me at (301) 915-5744.

Sincerely,

Mariana Olaizola Rosenblat
Policy Advisor on Technology and Law
NYU Stern Center for Business and Human Rights

Mariana Olaizola Rosenblat - olaizola@uchicago.edu

April 10, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I understand that Connor Robinson has applied for a clerkship with your chambers. I am very pleased to write a letter of reference on his behalf. Connor was a superb student and possesses all the qualities one might demand of a law clerk. He is diligent, thoughtful, and analytical; and he writes at a professional level.

I got to know Connor three years ago year when he was enrolled in my year-long Civil Procedure course. Due to the pandemic, I was required to teach the class on Zoom. That made it a tough experience for all. There were approximately 70 students in that class. By the middle of the second semester, one could sense the Zoom fatigue. But Connor never gave into it. He was a standout from the very beginning to the very end. Despite the challenges presented by Zoom, he participated actively in the daily discussions, demonstrating a professional level of preparation and an enthusiastic curiosity for the material. I was impressed with his dedication to learning and his ability to sort through complicated procedural doctrines. He is also very smart and capable of understanding and working with the most complex doctrines.

Connor has a strong work ethic, a crisp analytic mind, and an ability to write clearly. That combination paid off for him with an A in the course and a final exam that was truly superb. On top of that Connor is respectful, professional, and with the poise of someone who has both confidence and humility. He would be a wonderful addition to a judge's chambers.

Please let me know if I can be of further assistance.

Sincerely,
Allan Ides

Allan Ides - allan.ides@lls.edu - (213) 736-1464

Christopher C. Fennell, JD, PhD
Visiting Professor of Law
1111 East 60th Street
Chicago, Illinois 60637
Email cfennell@uchicago.edu
Telephone (312)513-2683

April 03, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to express my highest regard and strongest recommendation for selection of Conner J. Robinson to serve as a judicial clerk in your chambers.

When reviewing recommendation letters I receive for my University's programs, I find it helpful to be informed of the background of the recommender, and so I provide such information here. I am a Professor of Anthropology and Law at the University of Illinois at Urbana-Champaign (UIUC) and a yearly Visiting Professor of Law at the University of Chicago. I offer courses on law, anthropology, social norms, and the dynamics of racial ideologies. I am the founding editor of the peer-reviewed Journal of African Diaspora Archaeology and Heritage (Taylor & Francis Press) and the Restorative Justice in Heritage Studies and Archaeology book series (Routledge). After clerking for the Honorable Jane R. Roth (D. Del./3d Circuit), I was a practicing attorney for several years in Washington, D.C. in the areas of antitrust, contracts, product liability, torts, false claims, and securities disputes. I received the an Arlt Award in the Humanities by the Council for Graduate Schools and was appointed a University Scholar at UIUC for excellence in teaching and research. Through my work as a litigation attorney, teacher, editor, and manager of large-scale research projects, I have gained considerable experience in evaluating the scholarly, analytic, and advocacy skills of law students and young professionals.

I have known Conner for one year, based on his excellent participation in my seminar at the University of Chicago Law School on the intersections of "Anthropology and Law." This seminar provided an examination of social theories of the nature of law and disputes, related studies of legal structures in non-Western cultures, and consideration of the uses of anthropology in studying facets of our own legal system. By examining individual legal institutions in the context of their particular cultural settings, we made cross-cultural comparisons and contrasts. Our analytic and interpretative approaches entailed a scrutiny of the cultural assumptions that underpin various aspects of our own belief systems and the American legal system. Conner showed great skill in raising subjects in our seminar discussions in a way that immediately engaged other seminar participants in very productive conversations about the class materials and broader subjects of political and social dynamics.

Conner's seminar project provided an excellent and comprehensive analysis of the intersections of social identities concerning gender and sexual orientation with legal regulations of public comportment and required degrees of dress. As developments in our nation's social mores are expressed in U.S. Supreme Court decisions such as Obergefell v. Hodges (2015, recognizing a right to same-sex marriage), many ramifications need to be addressed in related domains of civil and criminal law. For example, in past decisions, state courts often refused to recognize the standing of a same-sex life partner to file a wrongful death claim against the employer of their deceased partner. Similarly, new legislative and regulatory initiatives seek to address the legal complexities which confront trans-sexual individuals. Conner's analysis addressed the past and current legal landscapes concerning permissible degrees of public nudity and the challenges for individuals of more fluid gender identities. For example, as an individual physically transforms from a male to a female identity, should they be susceptible to criminal charges for not wearing clothes on their torso on a sunny, summer day? This seemingly simple question lands one in a tangle of gender identities, individual status transformations, conduct regulations, and a historical pattern of male-dominated norms shaping public laws. Past court decisions (before Obergefell) have denied standing to life partners for wrongful death claims by examining the gender category listed on their birth certificates. Should police officers enforcing public nudity regulations do the same?

Conner's work in this project and as a participant in the seminar was excellent, and he earned a grade of "A" (182 in the University of Chicago's grade scale) for the course. Such a high grade is particularly notable in view of the fact that the University of Chicago Law School employs a mandatory grade distribution, with a requisite median grade in the "B" range, and Conner's classmates were law students of considerable skill and ambition. His academic achievements at the University of Chicago are enhanced by this institution's status as a world leader in research, teaching, and public engagement, distinguished by the breadth of its programs, broad academic excellence, internationally renowned faculty, and alumni who have earned Nobel and Pulitzer Prizes.

Conner's life experiences undoubtedly enhanced the analytic sensibilities he brings to such research and advocacy. During his childhood his family was forced from their home in Zimbabwe by the arrival and edicts of Robert Mugabe's dictatorship.

Christopher Fennell - cfennell@illinois.edu

Immigrating to the U.S., Conner and his family struggled with the demands of legal statuses. He was born in Zimbabwe and yet could produce no birth certificate due to the impacts of Mugabe's regime. The winding paths of U.S. naturalization procedures showed Conner the importance of advocacy to navigate myriad legal frameworks. Conner now possesses both a creative mind and a systematic focus for logical research that will make him a great researcher, lawyer, and advocate.

As his resume demonstrates, Conner's educational and professional training have significantly prepared him for an excellent career in the analysis and practice of law. His undergraduate years were marked by a succession of competitive scholarships and Dean's list of honors. In his law school education he has been dedicated to public impact initiatives and pro bono services. Conner has been active in a Genocide Justice Clinic, Public Interest Law Foundation, and Global Human Rights Clinic. He provided advocacy skills for clients in the Mobilization for Justice initiative in New York to address issues in discrimination, unfair housing, foreclosures, disability accommodations, and immigration. Conner similarly gained excellent experience as a summer associate at a leading law firm in New York City, and working on civil rights litigation cases for the U.S. Attorney's Office in California. All of these experiences involved the type of hands-on, detailed legal analysis which will make him an excellent judicial clerk.

Throughout all of these efforts, Conner has also performed with excellence in his course work at the Law School. Please give his application your strongest consideration. Please also let me know if I can provide any additional information in support of his candidacy.

Sincerely yours,

Christopher C. Fennell

Christopher Fennell - cfennell@illinois.edu

CONNER ROBINSON

21624 W. 177th Terrace, Olathe, KS 66062 • connerr@uchicago.edu

Writing Sample

For

Conner Robinson

I drafted the following writing excerpt as an assignment for my Legal Research and Writing class. I have omitted the table of contents, introduction, statement of facts, and conclusion for brevity.

The assignment was to draft a memorandum of points and authorities defending an employer from a hostile work environment claim brought under the Age Discrimination & Employment Act. Plaintiff and veteran reporter Ali Bashara filed a lawsuit against Defendant Southern California Media Group, Inc. (SCMG), claiming he was subjected to offensive comments that created a hostile work environment under the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 623(a)(1). After the bench trial, the court found Bashara had satisfied three of the four elements of the ADEA hostile work environment claim. The assignment was to submit a post-trial brief so that the court could determine whether Bashara proved harassment so severe or pervasive to alter the conditions of his employment."

MEMORANDUM OF POINTS AND AUTHORITIES**III. PLAINTIFF CANNOT ESTABLISH A VIABLE CLAIM OF HOSTILE WORK ENVIRONMENT.**

Bashara failed to establish a viable claim of hostile work environment under the ADEA because he has not demonstrated an essential element of such a claim. The ADEA was modeled after and shares a common purpose with Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. Sischo-Nownejad v. Merced Cmty. Coll. Dist., 934 F.2d 1104, 1109 (9th Cir. 1991). Thus, in assessing discrimination claims brought under the ADEA, courts routinely employ ADEA and Title VII caselaw interchangeably. Id.

Additionally, Congress never intended the ADEA to be a trivialized civility code that regulates ordinary workplace conduct. MacKenzie v. City & Cnty. of Denver, 414 F.3d 1266, 1280 (10th Cir. 2005). Accordingly, to prevail on his claim, the Bashara must prove sufficient severe or pervasive harassment. Crawford v. Medina Gen. Hosp., 96 F.3d 830, 834-35 (6th Cir. 1996); Zetwick v. Cnty. of Yolo, 850 F.3d 436, 439 (9th Cir. 2017). As established below, Bashara fails to prove the conduct was sufficiently severe or pervasive to produce an abusive working environment.

A. Much of the conduct Bashara alleged is irrelevant because many of the comments were not about age, or Bashara himself did not consider many of the comments abusive.

Much of the conduct that Bashara alleges is irrelevant to his ADEA claim. First, to prove a hostile work environment claim, the plaintiff must perceive the conduct to be abusive. 29 U.S.C. § 623(a)(1); Nichols v. Azteca Rest. Enters., Inc., 256 F.3d 864, 873 (9th Cir. 2001). However, Bashara did not perceive many of the comments to be abusive.

Bashara admits the term "Boomer" did not bother him and that he "understood it to be a joke." In fact, Bashara reciprocated these jokes by calling the newer reporters "Junior or Youngster." Lastly, while Bashara later became "tired" of the nickname and felt "irritat[ed]" by his co-workers' calling the veteran reporter "slow and obsolete," feeling "irritat[ed]" or "tired" is a far cry from perceiving the above conduct as abusive.

Second, to create a hostile work environment under the ADEA, the conduct must be because of the individual's age. Sischo-Nownejad, 934 F.2d at 1109. However, many of the comments here were not age-related. For example, the comments "slow" and "obsolete" were not about age; instead, the comments referred to a reporting style the veteran reporters preferred that created a lower story output and was more suitable for print publication. Because the paper was moving away from this style of journalism, the newer reporters referred to it as "slow and obsolete." Moreover, in response, Bashara stated he "knew [he] was a better reporter" than the newer reporters, evidencing these comments were not age-based; instead, they were describing a reporting style.

The facts here differ from those in Davis-Garett v. Urb. Outfitters, Inc., 921 F.3d 30 (2d Cir. 2019), where the court held a reasonable jury could find the comments "slow" and "low energy" were euphemisms about the plaintiff's age, when no evidence of poor performance existed. Unlike the plaintiff in Davis-Garett, some veteran reporters had evidenced performance issues. As above, "obsolete" directly references the veteran reporters' "slow" story output that failed to meet their required quota. Lastly, unlike the question before this court, the court in Davis-Garett did not determine whether the relevant conduct was definitively age-based discrimination, but instead, whether a jury

could find these comments discriminatory. Accordingly, Bashara fails to establish the comments "slow" and "obsolete" as definitive age-based discrimination.

B. Bashara did not prove the remaining was conduct sufficiently severe or pervasive to alter the conditions of his employment and create an abusive work environment.

As to the remaining conduct, Bashara did not prove it was sufficiently severe or pervasive to alter the conditions of his employment. To determine whether the conduct complained of is sufficiently severe or pervasive to create a hostile or offensive work environment, courts consider the totality of the circumstances, including: (1) the frequency and (2) severity of the harassing conduct; (3) whether it is physically threatening or humiliating; and (4) whether it unreasonably interferes with the employee's work performance. Crawford, 96 F.3d at 830; Dominguez-Curry v. Nevada Transp. Dep't, 424 F.3d 1027 (9th Cir. 2005). As explained below, Bashara failed to prove the remaining conduct was sufficiently severe or pervasive.

1. The relevant conduct was far too infrequent to amount to pervasive harassment.

The relevant conduct Bashara describes was not frequent enough to permeate the atmosphere with discriminatory intimidation. A court may be reluctant to find a hostile work environment where the conduct is too sporadic to permeate the atmosphere with discriminatory ridicule. See MacKenzie, 414 F.3d at 1280 (reasoning that courts judging hostility should filter out complaints attacking the sporadic use of age-related jokes and occasional teasing). Additionally, courts filter out conduct not directed towards the plaintiff when determining whether a hostile work environment occurred. See Manatt v. Bank of Am., N.A., 339 F.3d 792, 798 (9th Cir. 2003). For example, in Manatt, where

the plaintiff overheard two insinuations of racist remarks directed towards other employees over a two-and-a-half-year span, the court held such conduct directed towards other employees did not amount to a level needed to alter the plaintiff's conditions of employment. 339 F.3d at 798-99.

Here, the only relevant conduct directed towards Bashara was the “paperbombing” prank and Tarski's comments on Bashara's final two days of employment. Like the infrequent conduct in Manatt, these three incidents, which occurred during an almost two-year span, were far too infrequent to create a hostile work environment. Moreover, although the prank consisted of several papers, employees made the prank in a single barrage. See Kortan v. Cal. Youth Auth., 217 F.3d 1104, 1110-11 (9th Cir. 2000) (finding the conduct was too isolated to change the terms and conditions of employment where the supervisor made multiple comments in a flurry).

Even if the court considers the conduct not directed towards Bashara, such conduct was still too infrequent to sufficiently pervade the workplace. For example, in Westendorf v. West Coast Contractors of Nevada, Inc., 712 F.3d 417, 419-22 (9th Cir. 2013), where a supervisor asked a female employee every week to wear a French maid's costume while cleaning, the court found the offensive conduct was far too infrequent to amount to severity because the conduct did not become a permanent feature of the employment relationship. Id. at 421. Likewise, even including the conduct not directed towards Bashara, the frequency is still far below that of the once-a-week sexual remark found too infrequent in Westendorf. See id.

Moreover, even assuming this Court find the comments "Boomer" and "slow" and "obsolete" relevant, these comments are still far from the campaign of harassment that pervaded the workplace in Nichols. Nichols, 256 F.3d at 870-73. There, the court found a male employee taunted with female pronouns and mocked with derogatory names sustained a campaign of ridicule that permeated the workplace with ridicule and intimidation. Id. Conversely, the comments "Boomer" and "slow and obsolete" were simply too mild to have permeated the workplace with intimidation and ridicule, and, as discussed above, Bashara admits they did not bother him.

2. Bashara fails to prove the relevant conduct was sufficiently severe.

The conduct was also not severe enough to have created a hostile work environment. Because the ADEA is not a civility code, simple teasing, and mutual banter, are insufficient to support a claim. MacKenzie, 414 F.3d at 1281. For example, in Manatt, the court found no hostile work environment severe where coworkers made racist comments and gestures ridiculing Asian Americans, including pulling their eyes back with their fingers, because the conduct was "simple teasing." Manatt 339 F.3d at 799. For example, the court in MacKenzie reasoned that while an employer jokingly called the plaintiff "an old lady," the workplace was not sufficiently hostile because the plaintiff willingly engaged in "mutual banter" when she also made age-related jokes toward her employer. See MacKenzie, 414 F.3d at 1281. Here, the prank and nickname "Boomer" presents the simple teasing and mutual banter that could not have created a hostile work environment.

First, because the prank was common to the newsroom, Bashara similarly teased a journalist turning forty when he posted age-related jokes to his coworker's desk. Further, while Bashara may have disliked this prank, Bashara previously performed a similar age-based prank on a coworker, evidencing the prank represented simple banter. Second, before his wife's illness, Bashara greeted the nickname "Boomer" as simple workplace "razzing." Also, similar to the plaintiff's comments in MacKenzie, Bashara willingly engaged in mutual banter when he responded to "Boomer" by calling the newer reporters "Junior" and "Youngster."

Moreover, merely offensive utterances do not by themselves create a hostile work environment. See Sellers v. Deere & Co., 791 F.3d 938, 945 (8th Cir. 2015). For example, in Sellers, the court found no hostile work where the defendant engaged in extreme behavior such as spitting, pushing furniture, and pounding his fists towards the Id. Here, after Bashara had the lowest week of submission Tarski had ever seen, Tarski called Bashara "a senile old-timer" and "a fucking geriatric case." However, while admittedly rude, Tarski's comments fall far short of the insufficiently severe conduct in Sellers.

Additionally, a court may be reluctant to find conduct to be severe where the conduct occurred in the context of a work dispute. See Kortan, 217 F.3d at 1111. While undoubtedly rude, Tarski's comments on the last two days responded to months of unacceptable work and a total of three stories from the preceding week by Bashara. Likewise, in Kortan, the court reasoned that while the supervisor referred to female coworkers as "castrating bitches," the offensive conduct occurred "in the wake of a

dispute about a nurse's failure to follow instructions," and therefore was insufficiently severe. Id. Here, after constant encouragement, Bashara's performance finally deteriorated into the worst Tarski had ever seen. Like the supervisor in Kortan, Tarski's comments towards Bashara arose during the heat of reprimanding the worst performance Tarski had ever seen. Thus, Tarski's comments were insufficiently severe because they occurred in the wake of a work dispute.

Moreover, two additional factors minimize the severity here. First, a court may be reluctant to find comments sufficiently severe when the conduct is directed at coworkers. See Manatt, 339 F.3d at 798 (holding that a plaintiff could not establish a hostile work environment claim where she mostly overheard broad racial jokes directed towards other employees). Here, none of Tarski's remarks concerning Jackson and Wong involved Bashara. Tarski explicitly complimented Bashara during the same meeting where he reprimanded Jackson and Wong. Likewise, Tarski's email criticizes Jackson and Wong's work performance only after praising Bashara's. Moreover, the facts here differ from those in Dominguez-Curry, where the court held a jury could find a supervisor's repeated demeaning comments about women in general contributed to a hostile work environment even though they were not specifically directed at the plaintiff. Dominguez-Curry 424 F.3d at 1027. However, unlike the comments in Dominguez-Curry, Tarski's comments did not pervade the workplace because they were not general comments. Rather, they were specific criticisms concerning Jackson and Wong's poor performance.

Second, because Tarski apologized to Bashara for much of the conduct, much of the severity diminished. See MacKenzie, 414 F.3d at 1281 (upholding summary

judgment for the defendant in a hostile work environment claim because the employer apologized for the potentially offensive conduct). Indeed, Tarski apologized on multiple occasions, first, after the “paperbombing” prank, and then twice more on the last two days of Bashara’s employment. These multiple apologies diminished any severity here.

3. Bashara has failed to prove sufficient humiliation or physically threatening conduct occurred.

The conduct also did not create a hostile work environment because it was neither physically threatening nor humiliating. First, where courts have found conduct physically threatening, the conduct has been physically invasive and intimidating. See EEOC v. Nat’l Educ. Ass’n, Alaska, 422 F.3d 840, 843, 846 (9th Cir. 2005); see also Dediol v. Best Chevrolet, Inc., 655 F.3d 435, 439, 443 (5th Cir. 2011). For example, in National Education, the court held a jury could find a hostile work environment where a supervisor lunged over tables to grab an employee by the shoulders while pumping his fist and spitting in her face. 422 F.3d at 843, 846. No such physically intimidating or invasive conduct occurred here. To the contrary, Bashara admits he did not feel threatened by any of the images on his desk arising from the prank. Additionally, Bashara admits he was merely unnerved when Tarski got close to his face when he reprimanded him for poor performance and did not feel physically threatened.

Second, courts have found a hostile environment based on humiliation only where the defendant subjects the plaintiff to public ridicule designed to humiliate. See Nichols, 256 F.3d at 864, 873; see also Crawford, 96 F.3d at 832-36 (holding age-related insults were not severe or pervasive enough to create a hostile work environment because, even though they embarrassed the plaintiff, the supervisor did not design them to humiliate

her). For example, in *Nichols*, because the plaintiff's coworkers publicly ridiculed him in a manner that was designed to anger and humiliate him, the court found a triable issue as to whether it created a hostile work environment where a supervisor and other employees relentlessly mocked and taunted a male employee by calling him "faggot" and a "female whore." 256 F.3d at 870, 873.

Conversely, none of the comments here were designed to humiliate Bashara. Unlike the taunting designed to humiliate the plaintiff in *Nichols*, Tarski designed his comments on the last two days to reprimand Bashara for his deteriorating work. As such, despite one reporter's amusement at the comments, the comments were a legitimate reprimand, not a gratuitous comment. Likewise, the prank was a common workplace joke that Bashara himself helped carry out. Further, Tarski's surprise at Bashara's reaction evidences the prank was another commonplace joke not designed to humiliate, nor was it objectively humiliating.

4. Since Bashara continued to work throughout the alleged harassment before his wife's illness, Bashara fails to prove workplace conduct interfered with his job performance.

Lastly, the comments were not sufficiently severe or pervasive to create a hostile work environment because they did not adversely Bashara's work performance. Courts have been reluctant to find a hostile work environment where the conduct does not hinder the plaintiff's work performance. See *EEOC v. Prospect Airport Servs., Inc.*, 621 F.3d 991, 1000 (9th Cir. 2010); *see also Crawford*, 96 F.3d at 836 (finding because an employee did not show the harassment impeded her employment, no unreasonable interference occurred). For example, in *Prospect*, the court found sufficient evidence to

support a hostile work environment claim where an employee went from being a well-respected employee to being fired because his work deteriorated due to the campaign of ridicule he weathered. 621 F.3d at 1001. Additionally, in Zetwick, the court held a reasonable jury could find unreasonable interference where an employee's psychological health declined due to employer's conduct that polluted the workplace. 850 F.3d at 440, 445.

In contrast, the comments here did not impair Bashara's work performance. While it is undisputed Bashara's performance deteriorated, his regression began after his wife became sick. Before his wife's health issues arose, Tarski considered Bashara one of his best reporters. Moreover, unlike the plaintiff in Prospect, Bashara accepted the nickname "Boomer" and participated in pranks before his wife's health problems began. Further, on the day of the prank, Bashara's self-proclaimed worst day, his performance did not suffer; he submitted the required seven stories. Moreover, even after Bashara went to HR and the conduct ceased, his work performance continued to deteriorate while his wife was still sick. As such, unlike the plaintiff in Zetwick, Bashara's work was interfered by his wife's illness, not workplace conduct.

Applicant Details

First Name **Georgia**
 Last Name **Rock**
 Citizenship Status **U. S. Citizen**
 Email Address georgiarock27@gmail.com
 Address

Address
Street
1200 N Myers St
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Burbank
State/Territory
California
Zip
91506
Country
United States

Contact Phone Number **3236407598**

Applicant Education

BA/BS From **University of Chicago**
 Date of BA/BS **June 2020**
 JD/LLB From **New York University School of Law**
<https://www.law.nyu.edu>
 Date of JD/LLB **May 22, 2024**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Environmental Law Journal**
 Moot Court Experience **No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships **No**
 Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Hertz, Randy
hertz@nyu.edu
212-998-6434

Jackson, Robert
rjj6@nyu.edu
212-998-6225

Davis Noll, Bethany
Bethany.Davis-Noll@ag.ny.gov

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Georgia Rock
329 Union St
Brooklyn, NY 11231

June 12, 2023

The Honorable Jamar K. Walker
United States District Court
Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

My name is Georgia Rock and I am a rising 3L at New York University School of Law (“NYU Law”) with a focus in environmental public interest law. I am deeply inspired by your commitment to public service and write to express my strong interest in clerking in your chambers for the 2024-25 term or any subsequent term.

Enclosed please find my resume, law school transcript, undergraduate transcript, writing sample, and three letters of recommendation. The writing sample is a memorandum I wrote during my 1L summer internship at the State Energy and Environmental Impact Center. My letters of recommendation are from the following people:

Vice Dean Randy Hertz	randy.hertz@nyu.edu	212-998-6434
Professor Robert Jackson	robert.j.jackson@nyu.edu	212-998-6225
Ms. Bethany Davis Noll	bd56@nyu.edu	646-612-3458

Please let me know if I can provide any additional information. I can be reached by phone at 323-640-7598, or by email at gr2331@nyu.edu. Thank you very much for considering my application.

Respectfully,

Georgia Rock

Georgia Rock

GEORGIA ROCK

323-640-7598 • gr2331@nyu.edu

EDUCATION

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY

Candidate for J.D., May 2024

Unofficial GPA: 3.51

Activities: Public Interest Student Association, Co-Chair 2022-23

Environmental Law Journal, Articles Editor 2023-24

THE UNIVERSITY OF CHICAGO, Chicago, IL

BA in Near Eastern Language and Civilizations, *summa cum laude*, June 2020

Cumulative GPA: 3.98

Honors: Phi Beta Kappa; Georgiana Simpson Scholar in the Humanities

EXPERIENCE

ENVIRONMENTAL INTEGRITY PROJECT, Washington, DC

Summer Clerk, Summer 2023

Work under attorneys to litigate and advocate for environmental protections.

ENVIRONMENTAL LAW CLINIC, New York, NY

Student Advocate, January 2023-May 2023

Conducted case research and drafted memos under attorneys in the litigation team at the Natural Resources Defense Council. Participated in seminar where NRDC lawyers taught skills such as oral argument and brief writing.

STATE ENERGY AND ENVIRONMENTAL IMPACT CENTER, New York, NY

Research Assistant, August 2022- Present

Intern, May 2022-August 2022

Conduct research on the intersection of environmental criminal enforcement and environmental justice. Provided legal research and draft memoranda to support State Attorneys General in environmental litigation. Orchestrated data tracking project for AG cases and acted as point person for all summer interns conducting research on the project. Wrote a report and a blogpost published on SIC's website.

EPIC PAROLE ADVOCACY PROJECT, New York, NY

Parole Advocate, September 2021- May 2022

Co-wrote letter of advocacy detailing a theory of the case and re-entry plans for a parole applicant, leading to him being granted parole. Conducted monthly calls with the applicant preparing his parole file and board interview. Supervised and edited letters of support and reassurance for the applicant's file.

TEACHING ASSISTANT PROGRAM IN FRANCE, Lille, France

English Assistant, October 2020- April 2021

Facilitated lessons on English pronunciation and American culture for groups of 15-30 high school students. Developed lesson plans to supplement the students' grammar and vocabulary lessons.

UNIVERSITY OF CHICAGO ADMISSIONS OFFICE, Chicago, IL

Admissions Fellow, June 2019 - May 2020

Presented information sessions about University of Chicago to 50-100 visitors. Reviewed 20 undergraduate applications a week and provided a vote on their decision.

ADDITIONAL INFORMATION

Proficient in French. Enjoy tennis, independent movies, and reading fiction.

Name: Georgia Rock
 Print Date: 06/01/2023
 Student ID: N14917845
 Institution ID: 002785
 Page: 1 of 1

**New York University
 Beginning of School of Law Record**

Fall 2021

School of Law
 Juris Doctor
 Major: Law

Lawyering (Year)		LAW-LW 10687	2.5	CR
Instructor:	Colleen P Campbell			
Criminal Law		LAW-LW 11147	4.0	A
Instructor:	Randy Hertz			
Procedure		LAW-LW 11650	5.0	B+
Instructor:	Arthur R Miller			
Contracts		LAW-LW 11672	4.0	A-
Instructor:	Kevin E Davis			
1L Reading Group		LAW-LW 12339	0.0	CR
Instructor:	Cesar Rodriguez			

AHRS EHS

Current	15.5	15.5
Cumulative	15.5	15.5

Spring 2022

School of Law
 Juris Doctor
 Major: Law

Property		LAW-LW 10427	4.0	B+
Instructor:	Vicki L Been			
Lawyering (Year)		LAW-LW 10687	2.5	CR
Instructor:	Colleen P Campbell			
Legislation and the Regulatory State		LAW-LW 10925	4.0	B+
Instructor:	Adam M Samaha			
Torts		LAW-LW 11275	4.0	B+
Instructor:	Catherine M Sharkey			
1L Reading Group		LAW-LW 12339	0.0	CR
Instructor:	Cesar Rodriguez			
Financial Concepts for Lawyers		LAW-LW 12722	0.0	CR

AHRS EHS

Current	14.5	14.5
Cumulative	30.0	30.0

Fall 2022

School of Law
 Juris Doctor
 Major: Law

Corporations		LAW-LW 10644	5.0	B+
Instructor:	Robert Jackson			
Environmental Law		LAW-LW 11149	4.0	B+
Instructor:	Richard L Revesz			
Legal History Colloquium		LAW-LW 11160	2.0	A-
Instructor:	David M Golove Daniel Hulsebosch Noah Rosenblum			
Teaching Assistant		LAW-LW 11608	1.0	CR
Instructor:	Natasha Chokhani			
Research Assistant		LAW-LW 12589	2.0	NR
Instructor:	Katrina M Wyman			

AHRS EHS

Current	14.0	12.0
Cumulative	44.0	42.0

Spring 2023

School of Law
 Juris Doctor
 Major: Law

Environmental Law Clinic Seminar	LAW-LW 10633	2.0	B+
Instructor:	Kimberly W Ong Eric A Goldstein		
Environmental Law Clinic	LAW-LW 11120	3.0	A-
Instructor:	Kimberly W Ong Eric A Goldstein		
Government Lawyering at the State Level Seminar	LAW-LW 11303	2.0	A
Instructor:	Bethany Davis Noll		
Teaching Assistant	LAW-LW 11608	1.0	CR
Instructor:	Natasha Chokhani		
Constitutional Law	LAW-LW 11702	4.0	A-
Instructor:	Maggie Blackhawk		

AHRS EHS

Current	12.0	12.0
Cumulative	56.0	54.0

Staff Editor - Environmental Law Journal 2022-2023

End of School of Law Record

TRANSCRIPT ADDENDUM FOR NYU SCHOOL OF LAW
JD CLASS OF 2023 AND LATER & LLM STUDENTS

I certify that this is a true and accurate representation of my NYU School of Law transcript.

Grading Guidelines

Grading guidelines for JD and LLM students were adopted by the faculty effective fall 2008. These guidelines represented the faculty's collective judgment that ordinarily the distribution of grades in any course will be within the limits suggested. An A + grade was also added.

Effective fall 2020, the first-year J.D. grading curve has been amended to remove the previous requirement of a mandatory percentage of B minus grades. B minus grades are now permitted in the J.D. first year at 0-8% but are no longer required. This change in the grading curve was proposed by the SBA and then endorsed by the Executive Committee and adopted by the faculty. Grades for JD and LLM students in upper-level courses continue to be governed by a discretionary curve in which B minus grades are permitted at 4-11% (target 7-8%).

First-Year JD (Mandatory)	All other JD and LLM (Non-Mandatory)
A+: 0-2% (target = 1%) (see note 1 below)	A+: 0-2% (target = 1%) (see note 1 below)
A: 7-13% (target = 10%)	A: 7-13% (target = 10%)
A-: 16-24% (target = 20%)	A-: 16-24% (target = 20%)
Maximum for A tier = 31%	Maximum for A tier = 31%
B+: 22-30% (target = 26%)	B+: 22-30% (target = 26%)
Maximum grades above B = 57%	Maximum grades above B = 57%
B: remainder	B: remainder
B-: 0-8%*	B-: 4-11% (target = 7-8%)
C/D/F: 0-5%	C/D/F: 0-5%

The guidelines for first-year JD courses are mandatory and binding on faculty members; again noting that a mandatory percentage of B minus grades are no longer required. In addition, the guidelines with respect to the A+ grade are mandatory in all courses. In all other cases, the guidelines are only advisory.

With the exception of the A+ rules, the guidelines do not apply at all to seminar courses, defined for this purpose to mean any course in which there are fewer than 28 students.

In classes in which credit/fail grades are permitted, these percentages should be calculated only using students taking the course for a letter grade. If there are fewer than 28 students taking the course for a letter grade, the guidelines do not apply.

Important Notes

1. The cap on the A+ grade is mandatory for all courses. However, at least one A+ can be awarded in any course. These rules apply even in courses, such as seminars, where fewer than 28 students are enrolled.
2. The percentages above are based on the number of individual grades given – not a raw percentage of the total number of students in the class.
3. Normal statistical rounding rules apply for all purposes, so that percentages will be rounded up if they are above .5, and down if they are .5 or below. This means that, for example, in a typical first-year class of 89 students, 2 A+ grades could be awarded.
4. As of fall 2020, there is no mandatory percentage of B minus grades for first-year classes.

NYU School of Law does not rank students and does not maintain records of cumulative averages for its students. For the specific purpose of awarding scholastic honors, however, unofficial cumulative averages are calculated by the Office of Records and Registration. The Office is specifically precluded by faculty rule from publishing averages and no record will appear upon any transcript issued. The Office of Records and Registration may not verify the results of a student's endeavor to define his or her own cumulative average or class rank to prospective employers.

Scholastic honors for JD candidates are as follows:

<i>Pomeroy Scholar:</i>	Top ten students in the class after two semesters
<i>Butler Scholar:</i>	Top ten students in the class after four semesters
<i>Florence Allen Scholar:</i>	Top 10% of the class after four semesters
<i>Robert McKay Scholar:</i>	Top 25% of the class after four semesters

Named scholar designations are not available to JD students who transferred to NYU School of Law in their second year, nor to LLM students.

Missing Grades

A transcript may be missing one or more grades for a variety of reasons, including: (1) the transcript was printed prior to a grade-submission deadline; (2) the student has made prior arrangements with the faculty member to submit work later than the end of the semester in which the course is given; and (3) late submission of a grade. Please note that an In Progress (IP) grade may denote the fact that the student is completing a long-term research project in conjunction with this class. NYU School of Law requires students to complete a Substantial Writing paper for the JD degree. Many students, under the supervision of their faculty member, spend more than one semester working on the paper. For students who have received permission to work on the paper beyond the semester in which the registration occurs, a grade of IP is noted to reflect that the paper is in progress. Employers desiring more information about a missing grade may contact the Office of Records & Registration (212-998-6040).

Class Profile

The admissions process is highly selective and seeks to enroll candidates of exceptional ability. The Committees on JD and Graduate Admissions make decisions after considering all the information in an application. There are no combination of grades and scores that assure admission or denial. For the JD Class entering in Fall 2021 (the most recent entering class), the 75th/25th percentiles for LSAT and GPA were 174/170 and 3.93/3.73.

Updated: 10/4/2021

June 05, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend Georgia Rock for a clerkship.

In the fall 2021 semester, Georgia was one of the 95 students in my 1L Criminal Law course. At an early point in the semester, it became apparent to me from Georgia's comments in class that she is exceptionally intelligent and thoughtful. On a number of occasions, she made a comment or asked a question that demonstrated that she was thinking about the issues at a very deep level and recognizing important connections and implications.

The grade in the course was based entirely on the exam. Georgia received an "A." On each of the exam questions, she identified all of the relevant issues and did an excellent job of analyzing them.

Georgia came often to my office hours and participated in the discussions I had with students during office hours. As in class, I found her to be extremely intelligent, thoughtful, and well-informed. She thinks about legal and systemic issues in a broad, sophisticated way.

I recommend her with enthusiasm.

Respectfully,
Randy Hertz

Randy Hertz - hertz@nyu.edu - 212-998-6434



ROBERT J. JACKSON, JR.
Pierrepont Family Professor of Law
Director, Jacobson Leadership Program
Co-Director, Institute for Corporate
Governance and Finance

NYU SCHOOL OF LAW
 40 Washington Square South
 New York, NY 10012
 (914) 819-7527
 robert.j.jackson@nyu.edu

June 13, 2023

RE: Georgia Rock, NYU Law '24

Your Honor:

I understand that you are considering my student, Georgia Rock, for a place among your law clerks. I write to provide her application with my strongest support. After working closely with Georgia in the classroom, I have no doubt that she offers that rare combination of insight, work ethic, and judgment that make for an elite law clerk. In short, Georgia is among the few strongest clerkship candidates that I have worked with in our Class of 2024.

Georgia was a student in my *Corporations* class, and even in a section of more than 70, she stood out immediately. I teach *Corporations* from the perspective of law and economics, and Georgia shared with me during office hours that it was the first class she'd taken from that point of view. Yet by the end of our first month of classes together, Georgia was the group's most incisive, frequent participant, having acquired astonishing fluency with the standard arguments economists advance about corporate law. It wasn't long before I felt Georgia was not merely a student, but was teaching the class alongside me, anticipating most of my arguments about the cases we were reading—and challenging the weaker ones.

So it was no surprise when Georgia wrote a strong exam. Her writing on the issue-spotter I gave the class—a contest for control involving complex antitakeover defenses—especially stood out, and reviewing her work as I prepared to write this letter I could see why she did so well on that portion of the exam, writing one of the class's five strongest essays on that question. What was surprising, though, was that Georgia—so clearly one of the class's strongest students and obviously the student who learned the most about the law and discipline I taught throughout the semester—did not earn a better grade than the B+ she received. Please have no doubt: that result is attributable to the vagaries of a three-hour exam and in no way reflects the extraordinary work ethic, insight, and talent for analyzing argument that Georgia showed for months in class.

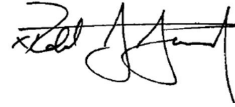
Having said all this, I'd be remiss not to add that Georgia is a wonderful person, the kind of student I'm always happy to see at my office threshold. She is thoughtful, kind, and generous. Having clerked on the Second Circuit myself, I know well how important the small community in Chambers is to the work of Judge and the Court. And I know, from hours together in class and hours more in my office working through all that she learned last Fall—that Georgia will be the kind of colleague you will be glad that you hired.

I have had the very great fortune of teaching corporate law and economics to hundreds of students here at NYU and indeed across the Nation while serving as an SEC Commissioner, and Georgia is among the best students I've ever worked with. Her application has my strong

Letter of Recommendation for Georgia Rock
Page 2

support. Should you have any questions, or if I can offer any further detail about my support for this truly exceptional student, please do not hesitate to contact me at your convenience.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert J. Jackson, Jr.", with a stylized, cursive script.

Robert J. Jackson, Jr.



State Energy &
Environmental Impact Center
NYU School of Law

June 12, 2023

RE: Georgia Rock, NYU Law '24

Your Honor:

I am the Executive Director of the State Energy & Environmental Impact Center and an Adjunct Professor at NYU School of Law. I am writing to give my strongest recommendation for Georgia Rock for a clerkship in your chambers.

I first got to know Georgia when she worked as an intern with my Center in the summer of 2022. She did excellent work, completing assignments on par with the staff attorneys in our office. For example, I tasked her with a complex project that required her to coordinate multiple people in the office all doing research that she had to compile and organize. She provided directions to the team she was working with so that the different team members provided all the updates in a consistent manner. And she gathered her questions for me into a list and then sought me out at regular intervals to answer them efficiently. I was so grateful for her conscientiousness on the project and was very pleased I could rely on her to take ownership of it. It is a testament to her proactiveness and maturity that she completed these complex assignments so well even while working remotely.

After the summer, because of her high-quality work, I recruited Georgia to continue on as a research assistant for us. She wrote a report for us on the takeaways from a criminal law training series we did. She led this project, taking responsibility for coordinating with our communications department and producing a polished final report, which will be published soon.

Georgia and I have also been working on a paper together. We are analyzing all of the justifications for using criminal law in the environmental law context through the justice-focused lens of the abolition movement and the environmental justice movement. She has done an excellent job pulling together the different strands of this research and now writing the paper. She again did a great job checking in with me regularly, asking insightful questions, and also taking my feedback and direction. She also did a lot of outreach to other academics as we did our literature review, following up when needed and helping me make useful connections with other scholars in these fields. I have really enjoyed working with her!

The State Energy & Environmental Impact Center
New York University School of Law • Wilf Hall, 139 MacDougal St., 1st Fl. • New York, NY 10012
stateimpactcenter@nyu.edu

Georgia Rock, NYU Law '24
June 12, 2023
Page 2

Georgia also took my seminar this past spring. The class is about the theory and practice of government lawyering, with a focus on state Attorneys General. Georgia wrote a paper that was very high quality. It took lessons from DOJ's efforts to modernize and improve its criminal enforcement work and explored ways that states could take similar steps. The paper was clear and easy to read. It was also interesting and provided a lot of insights, which I think are valuable. I think it is a publishable paper. I really enjoyed Georgia's participation in the class as well. She is thoughtful, respectful, and kind in the way she interacts in the office setting and classroom setting.

Overall, Georgia is well prepared to serve as an excellent clerk! She is reliable and self-directed. She will be a good colleague to her peers. I clerked twice and have had jobs in the private and public sector and truly believe that Georgia has the skills and qualities she needs to be an asset to your chambers, should you decide to hire her.

I am very happy to answer any questions about Georgia. I can be reached at 646-612-3458; bethany.davisnoll@nyu.edu.

All my best,



Bethany Davis Noll

GEORGIA ROCK

323-640-7598 • gr2331@nyu.edu

The attached writing sample is a memorandum that I drafted as an assignment when I was a summer intern at the State Energy and Environmental Impact Center. The assignment was to research whether Virginia's withdrawal from the Regional Greenhouse Gas Initiative (RGGI) would require legislation and if the emergency regulation process was a lawful alternative. I was also asked to research how Virginia's proposed timeline for its exit from RGGI could affect other participating states by comparing it to New Jersey's 2012 withdrawal from RGGI. My supervisor requested that my citations be in the footnotes. My supervisor provided light feedback on this memorandum, but it is substantially my own work.

I am submitting the attached writing sample with the permission of the State Energy and Environmental Impact Center.

Date: June 24, 2022

Re: Virginia Governor’s Authority to Exit RGGI Using Emergency Regulation

Introduction:

In 2020, Virginia joined the Regional Greenhouse Gas Initiative (“RGGI”). On Governor Youngkin’s first day in office, he issued Executive Order 9 with the stated purpose of “immediately begin[ning] regulatory processes to end” Virginia’s participation in RGGI.¹ The order directed Virginia’s Department of Environmental Quality (“DEQ”) to re-evaluate the costs and benefits of Virginia’s participation in RGGI.² The order also directed DEQ to develop both a proposed emergency regulation and permanent regulation repealing the Carbon Dioxide (CO₂) Budget Trading Program regulations.³ DEQ finalized a report and drafts of both the emergency regulation and permanent regulation in March 2022.⁴ This memorandum first examines the Governor’s authority to direct this emergency regulation, and then addresses how Virginia’s withdrawal from RGGI could impact other RGGI participating states through comparative analysis of the impacts of New Jersey’s earlier exit from RGGI.

I. Whether Virginia’s Governor has authority to repeal CO₂ Budget Trading Program Regulations⁵

A. Summary of Findings

The Governor does not have the authority to repeal state regulations that carry the force of law. Because the CO₂ Budget Trading Program Regulations were consistent with their

¹ Va. Exec. Order No. 2022-9 (January 31, 2022).

² *Id.*

³ Per Virginia’s Administrative Process Act (“APA”) §2.2-4011(C), an emergency regulation can only be in effect for 18 months. VA. CODE ANN. § 2.2-4011(A) (1975). An agency can promulgate a replacement regulation that goes through the APA procedure in order for the regulation to be effective beyond the 18-month period. *Id.*

⁴ See VA. DEP’T OF ENV’T QUALITY, VA. CARBON TRADING RULE AND REGIONAL GREENHOUSE GAS INITIATIVE (RGGI) PARTICIPATION COSTS AND BENEFITS: A REPORT TO THE HONORABLE GLENN YOUNGKIN, GOVERNOR (2022).

⁵ See 9 VA. ADMIN. CODE § 5-140-6050 (2019).

statutory charge and went through the required regulatory process for promulgation, they carry the force of law.⁶ The Governor must take care that the laws of Virginia be faithfully executed; thus, he cannot repeal them unilaterally.⁷ If Governor Youngkin repeals the CO₂ Budget Trading Program Regulations through an emergency regulation, he will violate the Virginia Constitution.

B. Analysis

In *Manassas Autocars, Inc. v. Couch*, the Supreme Court of Virginia held that when an agency enacts a regulation consistent with its statutory charge, and that regulation has gone through the required regulatory process for promulgation, it has the force of law.⁸ The Virginia Constitution states that the “Governor shall take care that the laws be faithfully executed”⁹ and provides that all power of suspending laws without the consent of the representatives of the people “is injurious to their rights, and ought not to be exercised.”¹⁰ Only a change in legislation or a court order can suspend a validly enacted regulation, and the Governor may not issue an executive order directing such suspension.

Virginia’s Administrative Process Act (“APA”) § 2.2-4011(A) allows for agencies to adopt emergency regulations if necessary in an emergency situation and states that “the necessity for such actions shall be at the sole discretion of the Governor.”¹¹ On the surface, this appears to allow the Governor to declare emergencies and designate agency actions as necessary in times of such emergencies. However, in order for this statute to comport with the Virginia Constitution, it

⁶ See *Manassas Autocars, Inc. v. Couch*, 274 Va. 82, 87 (Va. 2007) (finding that if an agency enacts a regulation consistent with its statutory charge, and that regulation has gone through the required regulatory process for promulgation, it has the force of law).

⁷ See VA. CONST. art. V, § 7.

⁸ See *Manassas Autocars*, 274 Va. at 87.

⁹ See VA. CONST. art. V, § 7.

¹⁰ *Id.*

¹¹ VA. CODE ANN. § 2.2-4011(A) (1975).

cannot give the Governor the power to direct agencies to promulgate emergency regulations that suspend validly enacted law.

The Clean Energy and Community Flood Preparedness Act (the “Act”) gives DEQ the authority to establish, implement, and manage an auction program “to sell allowances into a market-based trading program consistent with the RGGI program.”¹² Pursuant to the Act,¹³ DEQ amended its CO₂ Budget Trading Program regulations¹⁴ to require electricity producers to hold carbon dioxide allowances. This amendment is consistent with the Act and therefore carries the force of law.¹⁵

Executive Order 9 directs DEQ to draft a proposed emergency regulation repealing DEQ’s CO₂ Budget Trading Program regulations so that the State Air Pollution Control Board can consider this proposal.¹⁶ By directing the suspension of a regulation that lawfully implements a statute, this executive order contradicts the Take Care clause of the Virginia Constitution.¹⁷ In an advisory opinion, Former Virginia Attorney General (“AG”) Herring argued that the Governor could not lawfully issue an executive order to repeal the regulatory requirement that electric utilities hold carbon dioxide allowances.¹⁸ Former Virginia AG Cuccinelli issued an advisory opinion in 2014 stating that a Governor who used an executive order to “suspend the

¹² VA. CODE ANN. § 10.1-1330(B) (2020).

¹³ The Act likely does not strictly require DEQ to establish an auction program consistent with RGGI, but it does at least give DEQ the authority to establish this program. Subsection C of the Act states that the state treasury “shall hold the proceeds recovered from the allowance auction in an interest-bearing account” and lays out how the proceeds shall be used. VA. CODE ANN. § 10.1-1330(B) (2020). This could be argued to mean that an allowance auction is required, due to language such as “shall,” but there is a strong argument that this requirement for the distribution of proceeds is only applicable if there is an allowance auction.

¹⁴ 9 VA. ADMIN. CODE § 5-140-6050 (2019).

¹⁵ See *Manassas Autocars*, 274 Va. at 87.

¹⁶ Va. Exec. Order No. 2022-9; 9 VA. ADMIN. CODE § 5-140-6050 (2019).

¹⁷ VA. CONST. art. V, § 7.

¹⁸ 2022 Op. Va. Att’y Gen. No. 21-102.

operation of a validly enacted regulation” would be acting unilaterally and violating the Take Care Clause.¹⁹

Governor Youngkin may argue that, because the final decision to promulgate the emergency regulation is in the hands of the State Air Pollution Control Board, he would not be acting “unilaterally.”²⁰ However, this is a weak argument, as the Governor is clearly attempting to direct this suspension of DEQ’s CO₂ Budget Trading Program regulation, which has the force of law. Virginia’s APA § 2.2-4011 may give the Governor discretion to decide which actions are necessary in an emergency, but the statute does not grant the Governor authority to repeal state laws. The Take Care Clause of the Virginia Constitution prohibits the Governor from directing lawfully enacted regulation to be repealed.

II. Whether New Jersey’s 2012 withdrawal from RGGI may be informative when analyzing VA’s proposed withdrawal

A. The legal mechanisms of New Jersey’s participation in RGGI

In 2007, the New Jersey Legislature enacted the Global Warming Response Act.²¹ Similarly to Virginia’s Clean Energy and Community Flood Preparedness Act, the Global Warming Response Act authorized New Jersey’s Department of Environmental Protection (“DEP”) to promulgate rules and regulations establishing an allowance auction program, but did not mandate this auction program.²² Consistent with this statute, DEP adopted regulations establishing a CO₂ trading program (the “NJ Trading Program Regulations”).²³

¹⁹ 2014 Op. Va. Att’y Gen. No. 13-109.

²⁰ Governor Youngkin has made four appointments to the board, so it is likely that the board will promulgate the emergency regulation. See Sarah Vogelsong, *Youngkin Announces Slate of Environmental Board Appointments*, VIRGINIA MERCURY (May 16, 2022, 5:37 PM), <https://www.viriniamercury.com/2022/05/16/youngkin-announces-slate-of-environmental-board-appointments/>.

²¹ N.J. STAT. ANN. §§ 26:2C-37 to -68 (West 2007).

²² N.J. STAT. ANN. § 26:2C-47(a)(1) (West 2007).

²³ N.J. ADMIN. CODE §§ 7:2C-1.1 to -10.11 (2008).

When Governor Christie and DEP began the process of withdrawing New Jersey from RGGI in 2011, the withdrawal itself did not require any legislative or regulatory action. However, Environment New Jersey and Natural Resources Defense Council (“NRDC”) challenged DEP for engaging in an improper rulemaking by not repealing the NJ Trading Program Regulations.²⁴ DEP argued that these regulations were inoperative once New Jersey withdrew from RGGI, but the Appellate Division of the Superior Court of New Jersey agreed with the appellants that the regulations were sufficiently broad and could be implemented independently of RGGI.²⁵ Because the court found that the regulations were not defunct, DEP was ordered to undertake the appropriate rulemaking actions to repeal the NJ Trading Program Regulations.²⁶ In accordance with the order, DEP followed the formal rulemaking procedures established by the Administrative Procedure Act.²⁷ After the notice and comment period, DEP repealed the NJ Trading Program Regulations.²⁸

B. Effects of the New Jersey withdrawal on other RGGI participant states

When New Jersey announced its exit from RGGI in 2012, the commissioner of the New York State Department of Environmental Conservation emphasized RGGI’s success and the RGGI participating states issued a joint statement affirming their commitment to the effort.²⁹ Beyond this, no spokesperson for the participating states addressed how New Jersey’s speedy withdrawal from RGGI would affect the remaining states. However, resources from other reports suggest that New Jersey’s withdrawal did affect RGGI. The Center for Climate and Energy

²⁴ *In Re Reg’l Greenhouse Gas Initiative*, No. A-4878-11T4, 2014 N.J. Super. Unpub. LEXIS 644, at *13 (Super. Ct. App. Div. Mar. 25, 2014).

²⁵ *Id.* at *2.

²⁶ *Id.* at *14.

²⁷ N.J. STAT. ANN. § 52:14B-4 (1968).

²⁸ 47 N.J. Reg. 1937-38 (Aug. 3, 2015).

²⁹ Mireya Navarro, *Christie Pulls New Jersey From 10-State Climate Initiative*, NEW YORK TIMES (May 26, 2011) <https://www.nytimes.com/2011/05/27/nyregion/christie-pulls-nj-from-greenhouse-gas-coalition.html>.

Solutions wrote that the regional carbon dioxide cap was lowered to account for New Jersey's departure from the program.³⁰ It also stated that when New Jersey re-joined in 2020, the cap was increased, and it increased again when Virginia joined in 2021.³¹ Separately, an environmental strategic consulting firm issued a report in 2018 which found that, if New Jersey were to rejoin RGGI, the state's addition would "significantly increase the total emissions covered by the trading market," meaning that the RGGI market would "encompass more than 100 million tons of CO2 emissions across all of the covered power plants."³² A similar analysis could be done to assess Virginia's impact on RGGI.

C. Challenges to New Jersey's withdrawal from RGGI

New Jersey's withdrawal from RGGI faced challenges from within the state. The Senate President and Chairman of the Environment and Energy Committee co-sponsored a successful Senate Oversight Resolution affirming that New Jersey's withdrawal from RGGI violated legislative intent.³³ Another challenge was the aforementioned challenge brought by Environment New Jersey and NRDC.³⁴ As shown above, the New Jersey Superior Court Appellate Division agreed with Environment New Jersey and NRDC that DEP did not engage in proper rulemaking procedures, but this did not ultimately have an effect on New Jersey's ability to withdraw from RGGI. DEP proceeded to repeal the relevant regulations in order to comply with the court's holding.³⁵

³⁰ *Regional Greenhouse Gas Initiative (RGGI)*, CENTER FOR CLIMATE AND ENERGY SOLUTIONS, <https://www.c2es.org/content/regional-greenhouse-gas-initiative-rggi/>.

³¹ *Id.*

³² *MJB&A Issue Brief: Potential Impacts of New Jersey Joining RGGI*, M.J. BRADLEY & ASSOCIATES, LLC, (Jan. 19, 2018), https://www.mjbradley.com/sites/default/files/MJBA_NJ_Considers_Rejoining_RGGI.pdf.

³³ NJ SCR125 (Dec. 15, 2017).

³⁴ *In Re Reg'l Greenhouse Gas Initiative*, No. A-4878-11T4, 2014 N.J. Super. Unpub. LEXIS 644.

³⁵ 47 N.J. REG. 1937-38.

III. Conclusion

Governor Youngkin's attempt to use Executive Order 9 to repeal the CO₂ Budget Trading Program Regulations violates the Take Care Clause of the Virginia Constitution. Former AG Herring laid out this argument in an advisory opinion issued on his last day in office. Various reports about New Jersey's participation in RGGI suggest that Virginia's exit from RGGI could affect the regional carbon dioxide cap and reduce the emissions covered by the trading market. The challenges New Jersey faced due to their withdrawal from RGGI demonstrate potential avenues for challenging Virginia's exit. However, the issues litigated in the challenge brought by Environment New Jersey and NRDC may not be comparable to the issues in Virginia, since the Virginia Governor is already attempting to use Virginia's APA to repeal the regulations that were designed to implement the state's participation in RGGI.

Applicant Details

First Name **Katherine**
 Middle Initial **R.**
 Last Name **Ryan**
 Citizenship Status **U. S. Citizen**
 Email Address kryan7@uchicago.edu
 Address

Address**Street****6106 South University Avenue, APT 411****City****Chicago****State/Territory****Illinois****Zip****60637****Country****United States**

Contact Phone Number **6314958685**

Applicant Education

BA/BS From **State University of New York-Binghamton**

Date of BA/BS **May 2019**

JD/LLB From **The University of Chicago Law School**

<https://www.law.uchicago.edu/>

Date of JD/LLB **June 4, 2024**

Class Rank **School does not rank**

Law Review/Journal **Yes**

Journal(s) **Managing Editor, Chicago Journal of International Law**

Moot Court Experience **Yes**

Moot Court Name(s) **Board Member, Hinton Moot Court**

Bar Admission**Prior Judicial Experience**

Judicial Internships/ Externships	No
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

Wood, Diane
diane_wood@ca7.uscourts.gov

Lewis, Sheri
shl@uchicago.edu
773-702-9614

McDonough, Brooke
bellinwood@law.gwu.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Katherine Ryan
6106 S. University Avenue
Apartment 411
Chicago, I.L. 60637
631.495.8685

June 8, 2023

The Honorable Jamar K. Walker
U.S. District Court for the Eastern District of Virginia
600 Granby Street
Norfolk, V.A. 23510

Dear Judge Walker:

I am a rising third-year law student at the University of Chicago Law School, and I am applying for a clerkship in your chambers for the 2024 term. I have close friends and family in the Virginia Beach area, and I would welcome the opportunity to apply my analytical, research, and writing skills to the work of the United States District Court for the Eastern District of Virginia.

I developed my analytical skills in employment and academic settings. Before law school, I worked as a financial controls auditor, first in the private sector and later at the Federal Reserve. In that position, I conducted extensive research and analysis related to internal data, and benchmarked that data against relevant federal regulations to assign audit scores and write audit reports. My legal education has further developed these skills, and I have put them into practice as a litigation intern at the U.S. Department of Justice and as a summer associate at Latham and Watkins in Washington, D.C.

I also have strong research and writing skills. Throughout law school, I have researched statutes, regulations, and common law to draft memos and mock appellate briefs. Given my performance during my first year of law school, I was invited to serve as a Legal Writing Fellow and join *The George Washington University Law Review*. After transferring to the University of Chicago, I continued to refine those skills as the Managing Editor of *The Chicago Journal of International Law*. While serving in that role I produced my student comment, which will be published later this year.

A resume, transcript, writing sample, and letters of recommendation from Judge Diane Wood and Professors Sheri Lewis and Brooke McDonough are enclosed. The University of Chicago has not posted all grades for the spring quarter, but I will provide an updated transcript when they do so. Should you require additional information, please do not hesitate to contact me.

Sincerely,

Katherine Ryan

Katherine Ryan

Katherine Ryan

6106 S. University Avenue Apartment 411, Chicago, IL 60637 | kryan7@uchicago.edu | 631.495.8685

EDUCATION

The University of Chicago Law School

Chicago, IL

Juris Doctor Candidate

Expected June 2024

- Honors: Latham and Watkins Scholars Program, White Collar Defense and Investigations
- Activities: Managing Editor, *Chicago Journal of International Law* | Moot Court Board | First Generation Professionals

The George Washington University Law School

Washington, DC

Juris Doctor Candidate

August 2021 - May 2022

Cumulative GPA: 3.81

- Honors: George Washington Scholar (top 1-15% of class)
- Activities: Law and Economics Society | Law Association of Women Legal | Writing Fellows program

Binghamton University, State University of New York

Binghamton, NY

Bachelor of Science in Accounting, summa cum laude

August 2015 - May 2019

Cumulative GPA: 3.97

- Honors: Dean's List | The President's Circle of Excellence | PwC Scholar | BU Scholar
- Activities: Resident Assistant | Tour Guide | Business Calculus Tutor | Study Abroad, Maynooth University of Ireland

PUBLICATIONS

Brexit Backslide: How the United Kingdom's Break from the European Union Could Erode Female Labor Rights

The Chicago Journal of International Law

Upcoming, Volume 24

- Analyzed the impact of E.U. law on U.K. labor rights to illustrate the consequences of the recent Revocation and Reform Bill

WORK EXPERIENCE

Latham and Watkins

Washington, DC

Summer Associate

May 2023 - Present

- Conduct legal research and draft memoranda about sanctions, foreign investment, and income tax to aid attorneys and clients
- Attend client meetings, practice area information sessions, and firm events to better understand client-facing legal work
- Invited to the White Collar Defense and Investigations Scholars Program for academic achievement and practice area interest

The Department of Justice, Civil Division

Washington, DC

Aviation, Space, and Admiralty Litigation Summer Intern

May 2022 - August 2022

- Conducted legal research and drafted memoranda about the Federal Tort Claims Act to aid attorneys as they prepare for trial
- Attended depositions, meetings with expert witnesses, and pre-trial hearings to better understand the litigation process
- Received the J.B. and Maurice C. Shapiro Public Service Grant for summer funding from the George Washington University

The Federal Reserve, Office of the Inspector General

Washington, DC

Financial Management and Internal Controls Auditor

December 2020 - August 2021

- Performed industry research, stakeholder interviews, fieldwork testing, and report writing for audits of the FRB and CFPB
- Analyzed performance metrics to determine if the FRB and CFPB had made tangible improvements related to past audits
- Engaged with employees across the Federal Reserve as a member of Toastmasters and the Female Employee Resource Group

RSM US, LLP

New York, NY

Process Risk and Controls Consulting Associate

July 2019 - December 2020

- Verified the accountability of government institutions and financial entities through internal audits and SOX 404(b) testing
- Utilized accounting software tools such as Auditor Assistant, Collaborate, and Adobe to push projects to timely completion
- Regularly interacted with female and intergenerational employees through involvement in employee networking groups

VOLUNTEER EXPERIENCE

British Institute of International and Comparative Law

London, U.K.

Human Rights Summer Fellow

Incoming, August 2023

- Will serve as a research assistant for BIICL fellows to aid their work on retained E.U. law reform in the United Kingdom

Lazarus Rising

Binghamton, NY

Volunteer


January 2016 - May 2019

- Met one-on-one with multiple homeless Binghamton residents to assist their successful entry into the workforce
- Critiqued resumes and offered mock interviews to better prepare individuals for upcoming meetings with potential employers
- Maintained lasting relationships via email and phone calls to offer continued advice on professional betterment

INTERESTS AND SKILLS


Interests: Finance, running (10Ks and half marathons), bike riding, reading (historical fiction and biographies), cooking

Skills: Legal research and writing, interpretation of financial statements, SOX 404(b) auditing, CRP and first aid certified



THE UNIVERSITY OF CHICAGO
Office of the University Registrar
Chicago, Illinois 60637

REJECT DOCUMENT IF SIGNATURE BELOW IS DISTORTED



Name: Katherine R Ryan
Student ID: 12376444

Scott C. Campbell, University Registrar

University of Chicago Law School

Academic Program History

Program: Law School
Start Quarter: Autumn 2022
Program Status: Active in Program
J.D. in Law

External Education
State University of New York at Binghamton
Binghamton, New York
Bachelor of Science 2019

		Spring 2023		
Course	Description	Attempted	Earned	Grade
LAWS 40501	Constitutional Law V: Freedom of Religion Mary Anne Case	3	0	
LAWS 42801	Antitrust Law Eric Posner	3	3	175
LAWS 43251	Advanced Legal Writing Elizabeth Duquette	2	2	177
LAWS 53101	Legal Profession: Ethics Hal Morris	3	3	179
LAWS 94130	The Chicago Journal of International Law Meets Substantial Research Paper Requirement	1	1	P

Designation: Anthony Casey

Send To: Katherine Ryan
6106 S University Ave Apt 411
Chicago, IL 60637-5700

CREDIT AWARDED FOR ACADEMIC WORK DONE AT THE GEORGE WASHINGTON UNIVERSITY, 2021-2022 37

Beginning of Law School Record

Autumn 2022

Course	Description	Attempted	Earned	Grade
LAWS 41601	Evidence Geoffrey Stone	3	3	180
LAWS 42301	Business Organizations Anthony Casey	3	3	177
LAWS 48215	Modern American Legal History Meets Writing Project Requirement	3	3	183
LAWS 53264	Advanced Legal Research Sheri Lewis	2	2	182

Winter 2023

Course	Description	Attempted	Earned	Grade
LAWS 41101	Federal Courts Alison LaCroix	3	3	177
LAWS 53201	Corporate Criminal Prosecutions and Investigations Andrew Boutros	3	3	179
LAWS 59903	Judicial Federalism Diane Wood	3	0	
LAWS 94130	The Chicago Journal of International Law Anthony Casey	2	2	P

End of University of Chicago Law School

Honors/Awards
The University of Chicago Business Law Review, Staff Member 2022-23

Date Issued: 06/11/2023

Page 1 of 1

KEY TO TRANSCRIPT ON FINAL PAGE

OFFICIAL ACADEMIC DOCUMENT

THE UNIVERSITY OF
CHICAGOKey to Transcripts
of
Academic Records

1. Accreditation: The University of Chicago is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools. For information regarding accreditation, approval or licensure from individual academic programs, visit <http://cs.uchicago.edu/policies/disclosures>.

2. Calendar & Status: The University calendar is on the quarter system. Full-time quarterly registration in the College is for three or four units and in the divisions and schools for three units. For exceptions, see 7 Doctoral Residence Status.

3. Course Information: Generally, courses numbered from 10000 to 29999 are courses designed to meet requirements for baccalaureate degrees. Courses with numbers beginning with 30000 and above meet requirements for higher degrees.

4. Credits: The Unit is the measure of credit at the University of Chicago. One full Unit (100) is equivalent to 3 1/3 semester hours or 5 quarter hours. Courses of greater or lesser value (150, 050) carry proportionately more or fewer semester or quarter hours of credit. See 8 for Law School measure of credit.

5. Grading Systems:**Quality Grades**

Grade	College & Graduate	Business	Law
A+	4.0	4.33	
A	4.0	4.0	186-180
A-	3.7	3.67	
B+	3.3	3.33	
B	3.0	3.0	179-174
B-	2.7	2.67	
C+	2.3	2.33	
C	2.0	2.0	173-168
C-	1.7	1.67	
D+	1.3	1.33	
D	1	1	167-160
F	0	0	159-155

Non-Quality Grades

- I** **Incomplete:** Not yet submitted all evidence for final grade. Where the mark I is changed to a quality grade following the mark I, (e.g. IA or IB).
- IP** **Pass (non-Law):** Mark of I changed to P (Pass). See 8 for Law IP notation.
- NGR** **No Grade Reported:** No final grade submitted.
- P** **Pass:** Sufficient evidence to receive a passing grade. May be the only grade given in some courses.
- Q** **Query:** No final grade submitted (College only).
- R** **Registered:** Registered to audit the course.
- S** **Satisfactory**
- U** **Unsatisfactory**
- UW** **Unofficial Withdrawal**
- W** **Withdrawal:** Does not affect GPA calculation.
- WP** **Withdrawal Passing:** Does not affect GPA calculation.
- WF** **Withdrawal Failing:** Does not affect GPA calculation.
- Blank:** If no grade is reported after a course, none was available at the time the transcript was prepared.

Examination Grades

- H** Honors Quality
- ps** High Pass
- P** Pass

Grade Point Average: Cumulative G.P.A. is calculated by dividing total quality points earned by quality hours attempted. For details visit the Office of the University Registrar website: <http://registrar.uchicago.edu>.

6. Academic Status and Program of Study: The quarterly entries on students' records include academic statuses and programs of study. The Program of Study in which students are enrolled is listed along with the quarter they commenced enrollment at the beginning of the transcript or chronologically by quarter. The definition of academic statuses follows:

7. Doctoral Residence Status: Effective Summer 2016, the academic records of students in programs leading to the degree of Doctor of Philosophy reflect a single doctoral registration status referred to by the year of study (e.g. D01, D02, D03). Students entering a PhD program Summer 2016 or later will be subject to a

University-wide 9-year limit on registration. Students who entered a PhD program prior to Summer 2016 will continue to be allowed to register for up to 12 years from matriculation.

Scholastic Residence: the first two years of study beyond the baccalaureate degree. (Revised Summer 2000 to include the first four years of doctoral study. Discontinued Summer 2016)

Research Residence: the third and fourth years of doctoral study beyond the baccalaureate degree. (Discontinued Summer 2000.)

Advanced Residence: the period of registration following completion of Scholastic and Research Residence until the Doctor of Philosophy is awarded. (Revised in Summer 2000 to be limited to 10 years following admission for the School of Social Service Administration doctoral program and 12 years following admission to all other doctoral programs. Discontinued Summer 2016.)

Active File Status: a student in Advanced Residence status who makes no use of University facilities other than the Library may be placed in an Active File with the University. (Discontinued Summer 2000.)

Doctoral Leave of Absence: the period during which a student suspends work toward the Ph.D. and expects to resume work following a maximum of one academic year.

Extended Residence: the period following the conclusion of Advanced Residence. (Discontinued Summer 2013.)

Doctoral students are considered full-time students except when enrolled in Active File or Extended Residence status, or when permitted to complete the Doctoral Residence requirement on a half-time basis.

Students whose doctoral research requires residence away from the University register *Pro Forma*. *Pro Forma* registration does not exempt a student from any other residence requirements but suspends the requirement for the period of the absence. Time enrolled *Pro Forma* does not extend the maximum year limit on registration.

8. Law School Transcript Key: The credit hour is the measure of credit at the Law School. University courses of 100 Units not taught through the Law School are comparable to 3 credit hours at the Law School, unless otherwise specified.

The frequency of honors in a typical graduating class:

Highest Honors (182+)
0.5%
High Honors (180.5+)(pre-2002 180+)
7.2%
Honors (179+)(pre-2002 178+)
22.7%

Pass/Fail and letter grades are awarded primarily for non-law courses. Non-law grades are not calculated into the law GPA.

P** indicates that a student has successfully completed the course but technical difficulties, not attributable to the student, interfered with the grading process.

IP (In Progress) indicates that a grade was not available at the time the transcript was printed.

* next to a course title indicates fulfillment of one of two substantial writing requirements. (Discontinued for Spring 2011 graduating class.)

See 5 for Law School grading system.

9. FERPA Re-Disclosure Notice: In accordance with U.S.C. 438(6)(4)(B) (The Family Educational Rights and Privacy Act of 1974) you are hereby notified that this information is provided upon the condition that you, your agents or employees, will not permit any other party access to this record without consent of the student.

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University of Chicago
1427 E. 60th Street
Chicago, IL 60637
773.702.7891

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Revised 09/2016

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THE GEORGE WASHINGTON UNIVERSITY

WASHINGTON, DC

OFFICE OF THE REGISTRAR

GWid : G36193931
Date of Birth: 06-FEB

Date Issued: 10-JUL-2022

Record of: Katherine R Ryan

Page: 1

Student Level: Law
Admit Term: Fall 2021

Issued To: KATHERINE RYAN
KRYAN7@GWU.EDU

REFNUM:78706102

Current College(s): Law School
Current Major(s): Law

SUBJ NO	COURSE TITLE	CRDT	GRD	PTS
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GEORGE WASHINGTON UNIVERSITY CREDIT:

Fall 2021

Law School

Law

LAW 6202	Contracts	4.00	A-	
	Swaine			
LAW 6206	Torts	4.00	A	
	Turley			
LAW 6212	Civil Procedure	4.00	A-	
	Colby			
LAW 6216	Fundamentals Of	3.00	A	
	Lawyering I			
	McDonough			
Ehrs	15.00 GPA-Hrs	15.00	GPA	3.822
CUM	15.00 GPA-Hrs	15.00	GPA	3.822
GEORGE WASHINGTON SCHOLAR				
TOP 1%-15% OF THE CLASS TO DATE				

Spring 2022

Law School

Law

LAW 6208	Property	4.00	A-	
	Kieff			
LAW 6209	Legislation And	3.00	A	
	Regulation			
	Schwartz			
LAW 6210	Criminal Law	3.00	A	
	Weisburd			
LAW 6214	Constitutional Law I	3.00	B+	
	Chen			
LAW 6217	Fundamentals Of	3.00	A	
	Lawyering II			
	McDonough			
Ehrs	16.00 GPA-Hrs	16.00	GPA	3.792
CUM	31.00 GPA-Hrs	31.00	GPA	3.806
Good Standing				
DEAN'S RECOGNITION FOR PROFESSIONAL DEVELOPMENT				
GEORGE WASHINGTON SCHOLAR				
TOP 1%-15% OF THE CLASS TO DATE				

Fall 2022

Law School

Law

LAW 6250	Corporations On	4.00	-----	
LAW 6360	Criminal Procedure	3.00	-----	
LAW 6471	Patent Law	3.00	-----	
LAW 6472	Copyright Law	3.00	-----	
LAW 6647	Alternative Dispute	2.00	-----	
	Resolution			
Credits In Progress: 15.00				

***** CONTINUED ON NEXT COLUMN *****

SUBJ NO	COURSE TITLE	CRDT	GRD	PTS
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***** TRANSCRIPT TOTALS *****
Earned Hrs GPA Hrs Points GPA

TOTAL INSTITUTION 31.00 31.00 118.00 3.806

OVERALL 31.00 31.00 118.00 3.806

***** END OF DOCUMENT *****



E. J. McManis
University Registrar

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Office of the Registrar
THE GEORGE WASHINGTON UNIVERSITY
Washington, DC 20052

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DESIGNATION OF CREDIT

All courses are taught in semester hours.

TRANSFER CREDIT

Transfer courses listed on your transcript are bonafide courses and are assigned as advanced standing. However, whether or not these courses fulfill degree requirements is determined by individual school criteria. The notation of TR indicates credit accepted from a postsecondary institution or awarded by AP/IB exam.

EXPLANATION OF COURSE NUMBERING SYSTEM

All colleges and schools beginning Fall 2010 semester:

1000 to 1999	Primarily introductory undergraduate courses.
2000 to 4999	Advanced undergraduate courses that can also be taken for graduate credit with permission and additional work.
5000 to 5999	Special courses or part of special programs available to all students as part of ongoing curriculum innovation.
6000 to 6999	For master's, doctoral, and professional-level students; open to advanced undergraduate students with approval of the instructors and the dean or advising office.
8000 to 8999	For master's, doctoral, and professional-level students.

All colleges and schools except the Law School, the School of Medicine and Health Sciences, and the School of Public Health and Health Services before Fall 2010 semester:

001 to 100	Designed for freshman and sophomore students. Open to juniors and seniors with approval. Used by graduate students to make up undergraduate prerequisites. Not for graduate credit.
101 to 200	Designed for junior and senior students. With appropriate approval, specified courses may be taken for graduate credit by completing additional work.
201 to 300	Primarily for graduate students. Open to qualified seniors with approval of instructor and department chair. In School of Business, open only to seniors with a GPA of 3.00 or better as well as approval of department chair and dean.
301 to 400	Graduate School of Education and Human Development, School of Engineering and Applied Science, and Elliott School of International Affairs – Designed primarily for graduate students. Columbian College of Arts and Sciences – Limited to graduate students, primarily for doctoral students. School of Business – Limited to doctoral students.
700s	The 700 series is an ongoing program of curriculum innovation. The series includes courses taught by distinguished University Professors.
801	This number designates Dean's Seminar courses.

The Law School

Before June 1, 1968:

100 to 200	Required courses for first-year students.
201 to 300	Required and elective courses for Bachelor of Laws or Juris Doctor curriculum. Open to master's candidates with approval.
301 to 400	Advanced courses. Primarily for master's candidates. Open to LL.B or J.D. candidates with approval.

After June 1, 1968 through Summer 2010 semester:

201 to 299	Required courses for J.D. candidates.
300 to 499	Designed for second- and third-year J.D. candidates. Open to master's candidates only with special permission.
500 to 850	Designed for advanced law degree students. Open to J.D. candidates only with special permission.

School of Medicine and Health Sciences and

School of Public Health and Health Services before Fall 2010 semester:

001 to 200	Designed for students in undergraduate programs.
201 to 800	Designed for M.D., health sciences, public health, health services, exercise science and other graduate degree candidates in the basic sciences.

CORCORAN COLLEGE OF ART + DESIGN

The George Washington University merged with the Corcoran College of Art + Design, effective August 21, 2014. For the pre-merger Corcoran transcript key, please visit <http://gw.gwu.edu/corcorantranscriptkey>

THE CONSORTIUM OF UNIVERSITIES OF THE WASHINGTON METROPOLITAN AREA

Courses taken through the Consortium are recorded using the visited institutions' department symbol and course number in the first positions of the title field. The visited institution is denoted with one of the following GW abbreviations.

AU	American University	MMU	Marymount University
CORC	Corcoran College of Art & Design	MV	Mount Vernon College
CU	Catholic University of America	NVCC	Northern Virginia Community College
GC	Gallaudet University	PGCC	Prince George's Community College
GU	Georgetown University	SEU	Southeastern University
GL	Georgetown Law Center	TC	Trinity Washington University
GMU	George Mason University	USU	Uniformed Services University of the Health Sciences
HU	Howard University	UDC	University of the District of Columbia
MC	Montgomery College	UMD	University of Maryland

GRADING SYSTEMS

Undergraduate Grading System

A, Excellent; B, Good; C, Satisfactory; D, Low Pass; F, Fail; I, Incomplete; IPG, In Progress; W, Authorized Withdrawal; Z, Unauthorized Withdrawal; P, Pass; NP, No Pass; AU, Audit. When a grade is assigned to a course that was originally assigned a grade of I, the I is replaced by the final grade. Through Summer 2014 the I was replaced with I and the final grade.

Effective Fall 2011: The grading symbol RP indicates the class was repeated under Academic Forgiveness.

Effective Fall 2003: The grading symbol R indicates need to repeat course.

Prior to Summer 1992: When a grade is assigned to a course that was originally assigned a grade of I, the grade is replaced with I and the grade.

Effective Fall 1987: The following grading symbols were added: A-, B+, B-, C+, C-, D+, D-, Effective Summer 1980: The grading symbols: P, Pass, and NP, No Pass, replace CR, Credit, and NC, No Credit.

Graduate Grading System

(Excludes Law and M.D. programs.) A, Excellent; B, Good; C, Minimum Pass; F, Failure; I, Incomplete; IPG, In Progress; CR, Credit; W, Authorized Withdrawal; Z, Unauthorized Withdrawal; AU, Audit. When a grade is assigned to a course that was originally assigned a grade of I, the grade is replaced with I and the grade. Through Summer 2014 the I was replaced with I and the final grade.

Effective Fall 1994: The following grading symbols were added: A-, B+, B-, C+, C-, C- grades on the graduate level.

Law Grading System

A+, A-, Excellent; B+, B-, Good; C+, C-, C-, Passing; D, Minimum Pass; F, Failure; CR, Credit; NC, No Credit; I, Incomplete. When a grade is assigned to a course that was originally assigned a grade of I, the grade is replaced with I and the grade. Through Summer 2014 the I was replaced with I and the final grade.

M.D. Program Grading System

H, Honors; HP, High Pass; P, Pass; F, Failure; IP, In Progress; I, Incomplete; CN, Conditional; W, Withdrawal; X, Exempt; CNP, Conditional converted to Pass; CNF, Conditional converted to Failure. Through Summer 2014 the I was replaced with I and the final grade.

For historical information not included in the transcript key, please visit

<http://www.gwu.edu/transcriptkey>

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Diane P. Wood
Senior Lecturer in Law
The University of Chicago Law School
1111 E. 60th Street
Chicago, IL 60637

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am pleased to write this letter of recommendation for Katherine Ryan, who was a student in my Judicial Federalism seminar during the Winter Quarter of 2023 at the University of Chicago Law School. My observation of both her oral and written contributions to the seminar convince me that Katherine will make an outstanding law clerk.

The seminar was designed to explore the many ways in which we make federalism work in the courts. It begins with a look at the original decision in the Constitution to allow Congress to decide whether to have a full-blown system of federal courts. We then go on to consider jurisdictional doctrines, allocation devices such as the Rooker-Feldman doctrine, inter-system full faith and credit, abstention doctrines, and anti-injunction statutes. From there, we turn to substantive rules, primarily the Erie doctrine and the section 2254 version of habeas corpus. Last, we look at other systems, including state courts, tribal courts, and the courts of the European Union, to see what insight they provide.

Katherine's particular interest is in the last of those topics: how does the EU operate with a severely limited number of EU-level courts (just the Court of Justice, the General Court, and a couple of specialized tribunals), and how does it rely instead on the courts of the Member States to enforce EU law? Central to its system is a sort of reverse certification, pursuant to which a Member State court may (and sometimes must) ask the Court of Justice to answer a particular question of EU law. Katherine's upcoming fellowship at the British Institute of International and Comparative Law, where she will be working on the unraveling of the UK's now-terminated membership in the European Union, will touch on all these questions.

This is the topic Katherine has been exploring in her paper for the seminar. While the paper is not complete yet, I have seen enough of her work and have had enough discussions with her about it to know that it will be an excellent contribution to this literature. Most importantly, this comparative perspective allows one to take a fresh look at the policy choices we in the United States have made. With more clarity about our goals and mechanisms, we can take the right steps to achieve them more effectively.

I should add finally that Katherine brings a sophisticated knowledge of the financial world to her work. Her B.S. in Accounting, summa cum laude, will be of great help in a clerkship as she tackles securities issues, corporate law, various kinds of financial frauds, bankruptcy, and other such cases. She is also no stranger to litigation, having spent the summer of 2022 as an intern at the Civil Division of the U.S. Department of Justice, in its aviation, space, and admiralty section. In short, she has already accumulated a wide range of expertise that would be of great value in anyone's chambers. She is also someone who is widely liked and admired by her peers. She accomplished the transition from George Washington University Law School to the University of Chicago Law School without missing a beat; she quickly became the Managing Editor of the Chicago Journal of International Law. It is often hard for transfer students to become involved immediately in journals, moot court, and similar activities, but Katherine did it.

Please let me know if I may be of any further assistance. As I said at the outset, Katherine has my enthusiastic recommendation.

Yours truly,

Diane P. Wood

Diane Wood - diane_wood@ca7.uscourts.gov

Sheri H. Lewis
Director of the D'Angelo Law Library
D'Angelo Law Library
1121 East 60th Street | Chicago, IL 60637
phone: 773-702-9614 | fax: 773-702-2889
e-mail: shl@uchicago.edu

June 07, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend Katherine Ryan for a clerkship with you. Katherine is an outstanding student with a curious and analytical mind. It has been a pleasure to work with her at UChicago. I am sure that she would be an excellent law clerk.

I first met Katherine when she was in my Advanced Legal Research (ALR) course in the autumn 2022 quarter. ALR is a seminar class at the University of Chicago; it is limited to twenty-five students with an enrollment preference for third-year students. The course attracts self-motivated students interested in developing practical skills, particularly improving their effectiveness and efficiency as legal researchers. Katherine was one of a few second-years in last year's course.

Katherine was a terrific student, and her work was exceptional throughout the quarter. Her final paper was particularly noteworthy. Instead of an exam, students submit a comprehensive research paper on a selected legal topic. To complete the assignment, students thoroughly research a legal area or issue, analyze their findings at every step, and document their results and recommendations in a written product. Katherine's paper addressed the application of the "full and equal enjoyment" provision in Title III of the Americans with Disabilities Act. It was a well-written paper, excellent in its analysis, and among the best submitted in the course. I am impressed when a student's paper goes beyond the research parameters of their project and considers the real-world implications of a legal issue. Katherine's paper was unique in that regard.

I also have had an opportunity to get to know Katherine outside of class; she is delightful and has an impressive legal mind. Katherine is hard-working and a self-starter who takes the initiative and seeks guidance to ensure her understanding of an issue is sound and that her work on it is accurate and thorough. Katherine also is pleasant, courteous, and sincere, and I believe she would be a valuable and welcome member of your chambers' staff.

Based on my knowledge of her intelligence, research skill, and personal qualities, I strongly recommend Katherine for a law clerk position in your Court.

Very truly yours,
Sheri H. Lewis

Sheri Lewis - shl@uchicago.edu - 773-702-9614

Brooke Ellinwood McDonough
Associate Professor, Fundamentals of Lawyering
The George Washington University Law School
2000 H Street NW, Washington, DC 20052
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bellinwood@law.gwu.edu

June 07, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write this letter to enthusiastically recommend Katherine Ryan for a judicial clerkship. Katherine is an exceptional student whose character, self-initiative, and dedication to professional development ensure that she will also be an exceptional attorney. Based on my experience as an attorney and professor, I have no doubt Katherine will be an excellent law clerk and, indeed, an asset to any employer who hires her.

As a professor in the Fundamentals of Lawyering program at George Washington University's School of Law, I had the pleasure of working with Katherine during her entire first year of law school. My class is a required six-credit, full-year course. Katherine's section was comprised of sixteen students and met for three hours weekly. In this small group setting, I was able to get to know Katherine well. Katherine is a very skilled writer. Coupled with her excellent analytical skills and research ability, she received one of the top grades in my class in both the first and second semesters. In addition to these academic strengths, Katherine showed remarkable drive and self-initiative. Throughout both semesters, Katherine consistently worked hard to improve by meeting regularly with the Law School Writing Center. She did not see the achievement of a top score as her goal; she instead valued learning through and improving from the writing process. Katherine also went out of her way to receive feedback from me outside of class. Katherine frequently attended my office hours. When we met outside of class, Katherine was interested in learning not just about my class, but about different types of law practice and how to develop qualities that would ensure satisfaction and success in her future legal practice.

Finally, Katherine is simply an engaging and nice person. We both grew up in small towns on the East Coast and inherited a love of reading and history from our fathers. Katherine and I enjoyed discussing road trips to all the Revolutionary War memorials on the East Coast, and evenings spent watching the History Channel.

On a personal level, I was saddened when GW lost Katherine to the University of Chicago as I had looked forward to working with her throughout her time at GW. Fortunately, Katherine has kept in touch this year and I have enjoyed watching her continue to succeed and grow at the University of Chicago. I am confident she will be an excellent attorney and law clerk.

If you have any questions regarding my recommendation, please do not hesitate to contact me.

Very truly yours,
Brooke Ellinwood McDonough

Brooke McDonough - bellinwood@law.gwu.edu

TO: Cyrus Branch

FROM: Fall Associate 1131

RE: Books & Brews Salem LLC – Failure to Accommodate Concern

QUESTIONS PRESENTED

1. Under the ADA, is Jayde Ramirez’s dog Sasha a service animal when she has been trained to bark in a way that interrupts the anxiety attacks that Ramirez experiences due to PTSD?
2. Under the ADA, did the Black Cat Magic Café discriminate against Ramirez when they failed to modify their procedures to accommodate Sasha at their beer and music festival?

BRIEF ANSWERS

1. Likely yes. Under the ADA, a service animal is any dog individually trained to perform a specific task that directly benefits an individual with a disability. A task directly benefits an individual with a disability if it ameliorates a symptom of their disability and is performed in response to a specific trigger. In this case, Sasha’s barking interrupts the anxiety attacks that Ramirez experiences as a symptom of her PTSD. This barking is performed in response to triggers that manifest during the anxiety attacks. Therefore, Sasha is likely a service animal.
2. Likely yes. Under the ADA, a place of public accommodation discriminates against an individual with a disability when it fails to make reasonable modifications that are necessary to accommodate them. A modification is necessary when existing practices fail to provide full and equal enjoyment. To determine if a modification is reasonable, courts assess its associated costs, administrative burdens, and threats to health and safety. Here, Ramirez’s requests were intended to modify practices that prevented her from enjoying entertainment and amenities offered to non-disabled patrons. These modifications were inexpensive,

unlikely to disrupt festival operations, and would not threaten the health or safety of others.

Therefore, the Black Cat Magic Café likely discriminated against Ramirez.

STATEMENT OF FACTS

Books & Brews Salem LLC is the parent company of Black Cat Magic Café (the Café), a pop-up venue located in Salem, Oregon. R. at 8. During a beer and music festival at the Café, Jayde Ramirez (Ramirez) and her dog Sasha tried to enter the event tent but were turned away by the host, Ronald Betts (Betts), and manager, Emma Yousuf (Yousuf). *Id.* at 2.

Ramirez suffers from PTSD. *Id.* at 1. Her disability causes her to experience debilitating anxiety attacks. *Id.* Approximately one year ago, Ramirez adopted Sasha, a 140-pound Newfoundland, from the Can Go Dogs Training School. *Id.* at 11. At the time of her adoption, Sasha had been trained to recognize when her human partner was experiencing anxiety and would loudly and repeatedly bark in response to that recognition. *Id.* at 10. After adopting Sasha, Ramirez continued to train her to perform this task. *Id.* at 1. Sasha's barking helps Ramirez identify and avoid the stressful situations that cause her anxiety attacks. *Id.* According to Ramirez, Sasha is healthy and has no history of biting or aggressive behavior. *Id.* at 2.

On the day of the festival, all tables inside the venue were occupied when Ramirez and Sasha arrived, except for one directly next to a food truck. Transcript at 1. Ramirez requested to be seated at that table, but Betts refused, noting that Sasha might trip the servers, jump on the food, or create a mess that the festival's limited staff did not have the capacity to clean. *Id.* Betts offered the picnic tables outside the tent, but Ramirez declined, noting that she would not be able to view the river, stage, or sunset. *Id.*

After requesting to speak to Yousuf, Ramirez asked to sit on the grassy area in front of the festival stage. *Id.* at 2. Yousuf accepted this proposal, but noted that food would not be served there, and once the show began Ramirez would have to leave. *Id.* Ramirez declined and suggested that Betts move other guests to the open table in front of the food truck so that she could be seated away from it. *Id.* Betts denied this request, alleging that Sasha was “banging into people,” and “licking things.” *Id.* During these interactions, Betts also noted that Sasha was “gigantic, disgusting,” and getting “drool and hair everywhere.” *Id.* at 1. Regardless of this, adults and children gathered to pet her. *R.* at 13.

Betts then requested Sasha’s paperwork, claimed that Ramirez was lying about her disability, and pointed to a paraplegic patron wearing a Marine Corps t-shirt to illustrate that, “only true heroes deserve special treatment.” Transcript at 2. Sasha began to bark very loudly, and Betts requested that Ramirez remove her from the premises. *Id.* at 3. One patron who was petting Sasha voiced his objection to this request. *R.* at 13. While some were distracted from the event by Sasha’s barking, no complaints were voiced. *Id.* at 1-13; Transcript at 1-3.

According to Ramirez, the sight of the paraplegic patron triggered an anxiety attack that caused her to leave the venue. *R.* at 2. One week later, Ramirez wrote a letter to the Café in which she alleged that they violated her rights as a disabled person, demanded payment of \$50,000 within 30 days, and threatened to sue the Café if they failed to comply. *Id.* at 1.

DISCUSSION

- I. SASHA IS LIKELY A SERVICE ANIMAL BECAUSE SHE PERFORMS A SPECIFIC TASK THAT DIRECTLY BENEFITS AN INDIVIDUAL WITH A DISABILITY, AND THE CAFÉ LIKELY DISCRIMINATED AGAINST RAMIREZ BECAUSE THEY REFUSED TO MAKE REASONABLE MODIFICATIONS THAT WERE NECESSARY TO ACCOMMODATE HER.**

Under Title III of the ADA, no individual shall be discriminated against due to disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation. 42 U.S.C. § 12182. To establish a claim for failure to accommodate under Title III, a plaintiff must show that, “(1) [s]he is disabled as defined by the ADA; (2) the defendant is a private entity that owns, leases, or operates a place of public accommodation; (3) the defendant employed a discriminatory policy or practice; and (4) the defendant discriminated against the plaintiff based on the plaintiff’s disability by (i) failing to make a requested reasonable modification that was (ii) necessary to accommodate the plaintiff’s disability.” *Fortyune v. Am. Multi-Cinema, Inc.*, 364 F.3d 1075, 1081 (9th Cir. 2004).

It is undisputed that Ramirez is disabled per the ADA, the Café is a private entity that operates a place of public accommodation, and a discriminatory practice was employed. R. at 1-13; Transcript at 1-3. Thus, to successfully bring a failure to accommodate claim against the Café, Ramirez must demonstrate that they discriminated against her by refusing to make a requested reasonable modification that was necessary to accommodate her disability. *Fortyune*, 364 F.3d at 1081. Furthermore, because Ramirez has alleged that Sasha is her service animal, this memorandum will address the validity of that claim. R. at 1.

Part A discusses why Sasha is likely a service animal because she has been trained to perform a specific task that directly benefits Ramirez’s disability. Part B discusses why the Café likely discriminated against Ramirez by failing to make requested modifications that were (i) necessary, and (ii) reasonable.

A. Sasha Is Likely a Service Animal Because She Has Been Trained to Perform a Specific Task That Directly Benefits Ramirez’s Disability.

Under the ADA, a service animal is any dog individually trained to perform a specific task that directly benefits an individual with a disability. 28 C.F.R. § 36.104 (2021); *C.L. v. Del Amo Hosp., Inc.*, 992 F.3d 901, 910 (9th Cir. 2021). To promote equitable access and advance the goals of the ADA, the Ninth Circuit has held that a service animal's training may be conducted by their owner and does not require formal certification. *Id.*

A task directly benefits an individual's disability if its performance ameliorates a symptom of their disability. *Davis v. Ma*, 848 F. Supp. 2d 1105, 1116 (C.D. Cal. 2012). A task ameliorates a symptom if it interrupts or prevents its occurrence, and can be accomplished by barking, jumping, pawing, or licking. *See K.D. v. Villa Grove Cmty. Unit Sch. Dist. No. 302 Bd. of Educ.*, 936 N.E.2d 690, 692 (Ill. App. Ct. 2010) (affirming that a dog trained to bark during the night if its owner, a young boy with autism, left his bed ameliorated a symptom of his autism because it allowed his parents to interrupt his inadvertent attempts to run away); *Sadler v. Fred Meyer Stores, Inc.*, U.S. Dist. LEXIS 172562 (D. Or. 2018) (stating that a dog trained to jump on, paw at, and lick its owner, a woman who suffered from extreme anxiety, when she was having an anxiety attack ameliorated her symptoms because it prevented escalation by reminding her to calm down). While the trained task can be an ordinary behavior expected of a dog, such as barking or licking, it should be unique in that it is performed in response to triggers related to the owner's disability. *See C.L.*, 992 F.3d at 911 (stating that a hypothetical dog trained to sit in its owner's lap in a particular position ceased to engage in the ordinary behavior of a dog because it strictly sat that way in response to triggers related to the owner's disability).

In the present case, as in *C.L.*, the fact that Sasha's training was conducted by Ramirez and is not substantiated by formal certification is irrelevant. R. at 1. Instead, a court would consider whether Sasha's barking ameliorates the anxiety attacks that Ramirez experiences as a

symptom of PTSD by interrupting or preventing their occurrence. As in *K.D.*, where the court found that a service dog's barking ameliorated a symptom of a boy's autism by interrupting his inadvertent attempts to run away during the night, Sasha's barking ameliorates a symptom of Ramirez's PTSD by reminding her to leave the stressful situations that cause her anxiety attacks. *Id.* While Sasha's barking may seem less extensive than the jumping, pawing, and licking performed by the dog in *Sadler*, the purpose of these tasks was to prevent the owner's anxiety from escalating by reminding her to calm down, just as the purpose of Sasha's barking is to prevent Ramirez's anxiety from worsening by reminding her to leave stressful situations. *Id.*

Another relevant consideration is whether Sasha's barking is performed in response to triggers related to Ramirez's disability. As in *C.L.*, where the court noted that a hypothetical dog that was trained to sit in its owner's lap in a particular position ceased to engage in ordinary behavior because it strictly sat that way in response to triggers related to its owner's disability, Sasha's barking exceeds behavior that dogs naturally engage in because it is consistently performed in response to triggers related to Ramirez's anxiety attacks. *Id.* at 11. This is supported by the fact that Sasha only began barking after Betts pointed to a paraplegic veteran, which corresponds with the moment that Ramirez allegedly began suffering from an anxiety attack. *Id.* at 2; Transcript at 3.

Because Sasha is trained to bark in a way that ameliorates Ramirez's anxiety attacks and performs this task in response to triggers related to these attacks, she is likely a service animal.

B. The Café Likely Discriminated Against Ramirez Because They Failed to Make Requested Modifications That Were Necessary and Reasonable.

As previously noted, to establish that the Café discriminated against her on the basis of disability, Ramirez must show that they failed to make requested modifications that were both

reasonable and necessary. Subpart (i) will discuss why the modifications requested were necessary, and subpart (ii) will discuss why they were reasonable.

i. The modifications requested were necessary because the Café’s existing practices failed to provide Ramirez with full and equal enjoyment of their facilities.

A requested modification is necessary to accommodate a disabled individual if current practices fail to provide them with full and equal enjoyment of a public accommodation’s facilities. *Baughman v. Walt Disney World Co.*, 685 F.3d 1131, 1132 (9th Cir. 2012); 42 U.S.C. § 12182. Full and equal enjoyment guarantees more than mere access; it requires that disabled and non-disabled individuals be provided functionally equivalent experiences. *Celano v. Marriott Int’l, Inc.*, 242 F.R.D. 2, 38 (N.D. Cal. 2008). To determine if an experience is functionally equivalent, courts examine the experience from the point of view of non-disabled parties and assess whether a like experience is provided to their disabled counterparts. *See Or. Paralyzed Veterans of Am. v. Regal Cinemas, Inc.*, 339 F.3d 1126, 1137 (9th Cir. 2003) (finding that a movie theater failed to provide a functionally equivalent experience when non-disabled patrons had a variety of comfortable viewing locations to choose from while wheelchair users had to sit in the theater’s first row and uncomfortably crane their necks to view the screen).

An experience will not be considered “like” if it is a mere substitute that fails to provide benefits inherent to visiting the facility. *See Antoninetti v. Chipotle Mexican Grill, Inc.*, 614 F.3d 971, 979 (9th Cir. 2010) (holding that Chipotle’s burrito assembly process for wheelchair users, which included assembling the food at a table in the seating area, did not provide a like experience because it was a substitute that lacked the personal participation in ingredient selection that is a benefit inherent to ordering from Chipotle). Courts have held that these benefits can include social interaction with other patrons. *See Kalani v. Starbucks Corp.*, 117 F. Supp. 3d 1078, 1087 (N.D. Cal. 2015) (stating that a Starbuck’s wheelchair seating selection,

which required wheelchair users to sit facing a wall with their backs to the interior of the store, hindered their social interaction with other patrons, a benefit inherent to visiting Starbucks).

In this case, it is likely that the modifications requested by Ramirez were necessary because the Café's current practices failed to provide her with a functionally equivalent experience relative to non-disabled patrons. As in *Regal Cinemas*, where the court found that a movie theater's accommodations failed to provide an equivalent experience to wheelchair users who were forced to crane their necks to view a movie screen while non-disabled patrons had a variety of comfortable viewing locations, Betts' suggestion that Ramirez sit outside the tent at a picnic table would fail to provide her with a functionally equivalent experience because she would be unable to enjoy the river, stage, and sunset that non-disabled patrons could view without obstruction. Transcript at 1. Furthermore, Yousef's concession to allow Ramirez to sit on the grassy area in front of the stage would fail to provide a functionally equivalent experience because Ramirez would be unable to enjoy the food service provided to patrons inside the tent, and she would be required to leave once the area became crowded. *Id.* at 2.

A court might also determine that these accommodations offered by the Café were not "like" experiences because they were mere substitutes that failed to provide the benefits inherent to attending a beer and music festival. As in *Antoninetti*, where the court found that Chipotle's burrito assembly process did not provide a like experience for wheelchair users because it was a substitute that lacked the benefit of personal participation inherent to the Chipotle experience, requiring Ramirez to sit at the picnic tables or on the grassy area were substitutes to sitting inside the tent that deprived her of the benefits inherent to a beer and music festival, such as ordering food and alcohol and watching a live performance. *Id.* 1-2. Moreover, the present situation is similar to *Kalani*, where the court found that requiring wheelchair users to sit facing a wall

deprived them of the inherent benefit of socialization enjoyed by non-disabled Starbucks patrons, because requiring Ramirez to sit at the picnic tables would likely isolate her from other festival attendees and fail to provide her with the social benefits inherent to the event. *Id.* at 1.

Because the accommodations offered to Ramirez deprived her of a functionally equivalent experience and amounted to mere substitutes that lacked the benefits inherent to attending a beer and music festival, the modifications that Ramirez requested were necessary.

ii. The modifications requested were reasonable because they were inexpensive, unlikely to disrupt festival operations, and would not threaten health or safety.

Determining if a modification is reasonable requires a case-by-case inquiry that considers, among other factors, the costs, disruptions to business operations, and health and safety risks associated with the modification. *Baughman* 685 F.3d at 1136; *Johnson v. Gambrinus Co.*, 116 F.3d 1052, 1065 (5th Cir. 1997). These factors should be measured in a way that provides service animals with the broadest feasible access. *Lentini v. Cal. Ctr. for the Arts*, 370 F.3d 837, 841 (9th Cir. 2004).

Regarding costs, the Ninth Circuit has held that the price of a modification should not be disproportionate to its benefit to disabled patrons. *See Indep. Living Res. Ctr. S.F. v. Lyft, Inc.*, U.S. Dist. LEXIS (N.D. Cal. 2020) (holding that it would be unwarranted to force Lyft to implement a wheelchair accessible vehicle rideshare program because the program would require Lyft to pay \$1,200 per ride while serving, at most, 125 riders per month). In scoping the bounds of a disproportionate cost, courts hold that if the cost is close to zero dollars, it will be considered proportionate. *See Staron v. McDonald's Corp.*, 51 F.3d 353, 358 (2d Cir. 1995) (finding that the cost that McDonalds would incur by enforcing a no-smoking policy on behalf of patrons with smoke allergies would not be disproportionate because it would be close to zero dollars).

In terms of business operations, not all disruptions will make a modification unreasonable; courts have tolerated those that do not elicit complaints from other patrons. *See Lentini* 370 F.3d at 844 (affirming a district court decision requiring a performing arts center to accommodate occasional disruptive “yipping” from a disabled patron’s service dog because, among other things, the noise did not cause other patrons to complain). Courts have also permitted disruptions if they occur with limited frequency. *See Fortune*, 364 F.3d at 1084 (finding that requiring a movie theater to ensure that non-disabled patrons vacate handicapped companion seats when requested to do so would not create an undue disruption because, per the movie theater’s admissions, such events were exceedingly uncommon).

When considering safety and health impacts, concerns must be based on actual risks rather than speculation. *See Baughman*, 685 F.3d at 1137 (finding that Disney World was permitted to make a policy decision that prevented a disabled patron from using a Segway in their park, provided that their decision was founded on actual safety risks, such as pedestrian traffic volume, not speculation). In the context of venues that serve alcohol, the Fifth Circuit has held that service animals do not pose a health risk when there are areas of the venue where the animal can be accommodated without potential contamination. *See Johnson*, 116 F.3d at 1052 (holding that a guide dog did not pose a health risk at a brewery that provided public tours when there were areas of the brewery, such as a hospitality room where tour guests sampled beer, where the dog could be accommodated without the risk of contaminating alcohol).

In the present case, the costs associated with the modifications requested would likely be seen as reasonable. Unlike *Lyft*, where the court held that it would be unwarranted to require Lyft to implement a wheelchair rideshare program that would serve 125 riders per month and cost \$1,200 per ride, it would be warranted to expect the Café to seat Ramirez next to the food truck

or move other guests, because doing so would allow her to enjoy the festival while costing the Café nothing. Transcript at 1-3. As in *Staron*, where the court reasoned that the cost that McDonalds would incur by enforcing no-smoking policies in their restaurants was proportionate because it would be close to zero dollars, the costs of Ramirez’s requests are likely to be seen as proportionate because they too would be close to zero dollars. *Id.*

Furthermore, implementing the requests would not create an undue business disruption. As in *Lentini*, where the Ninth Circuit required a performing arts center to accommodate the occasional “yipping” from a disabled patron’s service dog because other customers failed to complain, a court may hold that the Café should have accommodated Sasha’s potentially disruptive barking because no festival patrons complained. R. at 1-13. Children were eager to play with her, and one patron objected when Betts requested that Ramirez remove her from the premises. R. at 13. While some patrons were distracted by her barking, none voiced complaints. *Id.* Also, as in *Fortyune*, where the court found that the burden of requiring that patrons vacate handicapped companion seats when requested would be within reason due to the infrequency of such requests, the burden of asking a table of seated customers to move next to the food truck would be within reason because it is unlikely that the Café would need to make such requests frequently, given the improbability that they are often visited by large service dogs with a proclivity for drooling and shedding. R at 11; Transcript at 1.

In addition, it is unlikely that Sasha posed any safety or health risks to other patrons. As in *Baughman*, where the court held that Disney World could deny the use of a Segway in their park if their decision was based on actual safety risks as opposed to speculation, Betts’ failure to seat Sasha by the food truck would be permissible if his concerns about her tripping servers, jumping on food, or creating a mess were non-speculative. Transcript at 1. However, at the time

that he expressed these concerns, Sasha had not behaved in a way that would indicate such risks were probable, therefore these concerns were likely speculative. *Id.* While Betts noted that Sasha was “banging into people” and “licking things,” when Ramirez asked him to move other patrons, these behaviors are unlikely to rise to the level of a real safety risk, especially given that Sasha is healthy and has no history of biting or aggressive behavior. R. at 2. Additional similarities can be drawn to *Johnson*, where the court held that a guide dog did not pose a health risk at a brewery when it could be accommodated in a beer sampling room without potential for contamination, because Sasha would not have posed a health risk at the festival had she been seated away from the food truck, safe from potential food and alcohol contamination, as Ramirez requested. Transcript at 2.

In light of their associated costs, disruptions to business operations, and health and safety risks, the modifications requested by Ramirez appear to be reasonable.

CONCLUSIONS AND RECOMMENDATIONS

As stated above, Sasha is likely a service animal under the ADA because she is individually trained to perform a specific task that directly benefits an individual with a disability. *C.L.*, 992 F.3d at 910; R. at 1-2. Furthermore, the Café likely discriminated against Ramirez because they failed to make requested modifications that were necessary and reasonable. *Fortyune*, 364 F.3d at 1081; Transcript at 1-3. For these reasons, Ramirez will likely be able to establish a claim for failure to accommodate under Title III of the ADA, and Books & Brews Salem LLC should attempt to settle this matter to avoid litigation.

As the parent company of the Café, Books & Brews Salem LLC should also take affirmative steps to prevent future discrimination by their staff. First, they should require all